7–8–09 Wednesday
Vol. 74 No. 129 July 8, 2009

Pages 32389–32784

Federal Register

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WHEN: Tuesday, July 14, 2009
9:00 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Contents

Federal Register

Vol. 74, No. 129

Wednesday, July 8, 2009

Reader Aids
Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
52.....32389
354.....32391
1205.....32400
1730.....32406

12 CFR
41.....32410
222.....32410
334.....32410
571.....32410
717.....32410

14 CFR
39 (7 documents) 32411, 32414, 32417, 32419, 32421, 32423, 32426

Proposed Rules:
39.....32471

16 CFR
641.....32410
680.....32410
681.....32410
698.....32410

17 CFR

Proposed Rules:
240.....32474
270.....32688
274.....32688

33 CFR
100 (2 documents) 32428, 32431

40 CFR
180 (5 documents) 32433, 32437, 32443, 32448, 32453
190.....32456
721.....32460

Proposed Rules:
80.....32479
85.....32479
86.....32479
94.....32479
1027.....32479
1033.....32479
1039.....32479
1042.....32479
1043.....32479
1045.....32479
1048.....32479
1051.....32479
1054.....32479
1060.....32479
1065.....32479
1068.....32479

44 CFR

Proposed Rules:
67.....32480

47 CFR
73.....32466

Proposed Rules:
73 (2 documents) 32489, 32490

50 CFR
648.....32466
679.....32469

Proposed Rules:
17 (3 documents) 32490, 32510, 32514
300.....32521
622.....32528

Rules and Regulations

Federal Register
Vol. 74, No. 129
Wednesday, July 8, 2009

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[Doc. No. AMS–FV–08–0075; FV–08–330]

RIN 0581–AC89

Country of Origin Labeling of Packed Honey

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule would establish a new regulation addressing country of origin labeling for packed honey bearing any official USDA mark or statement and would add a new cause for debarment from inspection and certification service for honey. The rule is necessary because section 10402 of the Food, Conservation and Energy Act of 2008 (2008 Farm Bill) amended the Agricultural Marketing Act of 1946 to require country of origin labeling for honey if it contains official USDA grade marks or statements. The regulations governing inspection and certification would be amended to include a provision for country of origin labeling requirements for packed honey and for debarment of services if the country of origin labeling requirements are not met for packages of honey containing official USDA grade marks or statements.

DATES: This interim final rule is effective on October 6, 2009. Comments must be submitted on or before September 8, 2009.

ADDRESSES: Interested persons are invited to submit comments via the Internet at *http://www.regulations.gov.* Comments submitted by mail or courier must be sent in duplicate to the Chere L. Shorter, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, Washington, DC 20250–0247, fax (202) 690–1087, or e-mail *Chere.Shorter@ams.usda.gov.* Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours and on the Internet at *http://www.regulations.gov* or *http://www.ams.usda.gov/processedinspection.* All comments received will be posted without change, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Chere L. Shorter at the above address, call (202) 720–4693, or e-mail *Chere.Shorter@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 10402 of the 2008 Farm Bill (Pub. L. 110–246) amended section 1622(h) of the Agricultural Marketing Act of 1946, (7 U.S.C. 1621–1627, 1635–1638d (Act)), to require that all packed honey bearing any official USDA mark or statement also bear ''legibly and permanently in close proximity (such as on the same side(s) or surface(s)) to the certificate, mark, or statement, and in at least a comparable size, the [country or] countries of origin of the lot or container of honey, preceded by the words 'Product of' or other words of similar meaning.'' Section 10402 also establishes that a violation of the labeling requirements may be deemed by the Secretary of Agriculture to be sufficient cause for debarment from the benefits of the Act, only with respect to honey, and that the honey amendments shall take effect one year after the date of enactment of the 2008 Farm Bill, which is June 18, 2009.

The Act authorizes official inspection, grading, and certification for processed fruits, vegetables, and processed products made from them. This amendment to the Act requires the amendment of the regulations in 7 CFR part 52, which provide for official inspection and certification services with respect to processed fruit, vegetables, and miscellaneous products and the fees charged for such services. Section 52.53 describes and illustrates the use of approved certification marks. Section 52.54 lists the acts or practices that may cause debarment by the Administrator of any person from any benefits of the Act for a specified period of time. These include: (1) Fraud or misrepresentation in filing an application; submission of samples; use of an inspection report or certificate; use of the words ''Packed under continuous inspection of the U.S. Department of Agriculture,'' any legend signifying that the product has been officially inspected, any statement of grade or similar words; use of a facsimile form; (2) willful violations of the regulations; or (3) interfering with an inspector, inspector's aid, or licensed sampler. Pursuant to the amendment of the Act by the 2008 Farm Bill, section 52.54 will be amended to add a new paragraph providing for debarment of services if the country of origin labeling requirements are not met for honey.

Executive Order 12988

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect and does not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act and Paperwork Reduction Act

As required by the Regulatory Flexibility Act, 5 U.S.C. 601–612, the Agricultural Marketing Service (AMS) has prepared a regulatory flexibility analysis. AMS, however, does not currently have all of the data necessary for a comprehensive analysis of the effects of this interim final rule on small entities. Therefore, AMS welcomes public comment that would enable it to more fully consider impacts of the rule, especially information on the use of official USDA grade marks on honey and any costs associated with reconfiguring product labeling.

AMS estimates that there are between 139,600 and 212,000 beekeepers in the United States. The vast majority of beekeepers (95 percent) are hobbyists with fewer than 25 hives, or bee colonies, and about 4 percent are part-

time beekeepers who keep from 25 to 299 hives. Together, hobbyists and part-time beekeepers account for about 50 percent of bee colonies and about 40 percent of honey produced. Commercial beekeepers are those with 300 or more bee colonies. There are approximately 1,600 commercial beekeeping operations in the United States, which produce about 60 percent of the nation's honey.

AMS believes that there are approximately 2,000 producers of honey, 45 handlers/packers, and 659 importers of honey and honey products. The Small Business Administration [13 CFR 121.201] defines small agricultural producers as those having annual receipts of $750,000 or less annually and small agricultural service firms as those having annual receipts of $7 million or less. Using these criteria, most producers and handlers/packers would be considered small businesses, while most importers would not.

National Agricultural Statistics Service (NASS) data report that U.S. production of honey, from producers with five or more colonies, totaled less than 155 million pounds in 2006, representing a decrease of almost 16 percent from 2004. The number of U.S. bee colonies producing honey in 2007 was 2.4 million (based on beekeepers who manage five or more colonies).

In 2007, more than 148 million pounds of honey were produced in the United States. The average annual yield per colony was 60.8 pounds of honey. The average producer price per pound was $1.03. The 2007 honey crop was valued at more than $153 million. In 2006, the honey price was $1.04, which was up 14 percent from $0.92 in 2005.

The top six honey producing States in 2006 were North Dakota, California, Florida, South Dakota, Montana, and Minnesota. NASS reported the value of honey sold from these six states in 2006 was $84,583,000 and the volume produced was 90,433,000 pounds. From 1980–2002, U.S. honey production averaged around 200 million pounds per year, with U.S. commercial beekeepers producing more than 220 million pounds of honey as recently as 2000.

Based on the reports by U.S. Customs and Border Protection (Customs), seventeen countries produced more than 93 percent of the honey imported into the U.S. In 2005, five of these countries produced almost 79 percent of the total honey imported into the United States. These countries and their share of the imports are China (27 percent), Argentina (21 percent), Vietnam (13 percent), Canada (10 percent), and India (8 percent). Imports accounted for 69 percent of U.S. consumption in 2006, an increase of 18 percent, up from 51 percent since 2002.

The United States is one of the world's largest markets for industrial honey. This sector accounts for approximately 45 percent of total domestic consumption. The primary users of industrial honey are bakery, health food, and cereal manufacturers. Other users such as the food service industry account for another 10 percent of domestic consumption. Individual consumers who purchase small amounts of honey for personal use also significantly contribute to overall consumption in the United States. Consumption in the United States is about 275 million pounds.

USDA grades for honey are not mandatory, but beekeepers, handlers/packers labeling honey as a particular grade are responsible for the accuracy of the label. The U.S. Standards for Grades of Honey are located on the AMS Web site at *http://www.ams.usda.gov/processedinspection.*

The Act authorizes the inspection, certification, and identification of class, quality, quantity, and condition of agricultural commodities. Under the Act, no person is required to use the services.

The 2008 Farm Bill amended the Act to require that packaged honey bearing a grade mark or statement, continuous inspection mark or statement, sampling mark or statement, or any combination of marks or statements of the Department of Agriculture, must also bear the one or more names of the countries of origin of the lot or container of honey legibly and permanently in close proximity to and at least in comparable size to the mark or statement.

Under the existing regulations governing the inspection and grading of processed fruits, vegetables, and miscellaneous products, section 52.53 provides for the use of approved identification marks and paragraph (h) describes or lists prohibited uses of approved identification. Section 52.53(h) provides that, except for officially inspected or otherwise approved products, no label or advertising material used upon, or in conjunction with, a processed product shall bear a brand name, trademark, product name, company name, or any other descriptive material as it relates or alludes to any official U.S. Department of Agriculture certificate of quality or loading, grade mark, grade statement (except honey and maple syrup which may bear such grade mark or statement), continuous inspection mark, continuous inspection statement, sampling mark or sampling statement or combinations of one or more of the above. Therefore, honey and maple syrup may bear official USDA grade marks without official inspection.

This rule would apply to domestic as well as foreign sources of honey. Under this rule, any honey that has a grade mark or official U.S. grade mark would have to include in its label the country of origin in letters at least the same size and in close proximity to the grade mark. For example, if foreign or domestic honey were labeled Grade A or U.S. Grade A, then it would have to identify its country or countries of origin. Conversely, if the honey is not officially grade labeled, the country of origin labeling is not necessary whether the honey is domestic or foreign.

AMS believes that under current industry labeling practices, packages of honey that include the official U.S. grade marks, in most cases, also include country of origin labeling. However, the Act requires that all honey bearing any official USDA mark or statement also bear legibly and permanently in close proximity (such as on the same side(s) or surface(s)) to the certificate, mark, or statement, and in at least a comparable size, the country or countries of origin of the lot or container of honey, preceded by the words ''Product of'' or other words of similar meaning. AMS is interested in any comments from producers, handlers, importers, or other interested persons concerning the cost, if any, associated with reconfiguring the labeling of honey in accordance with this rule.

Because honey does not require official inspection in order to carry official USDA grade marks and since there are no existing programs that require the official inspection and certification of honey, AMS believes that there will be little, if any, impact on the honey industry or small entities. Further, AMS believes that product labeling changes normally involve reconfiguring labeling without substantial costs and without having to purchase new equipment.

With regard to alternatives to this rule, section 10402 of the 2008 Farm Bill amends the Act, which requires AMS to amend its regulations.

Enforcement will be handled by AMS if it receives complaints. All complaints will be turned over to our Compliance and Analysis Program (Compliance) who will investigate the alleged violation. Compliance would then determine the validity of the complaint, and appropriate action would be taken. Further, it is reasonable to allow time for packaged honey bearing any official USDA mark or statement already in the

chain of commerce to clear the system and allow the honey industry time to reconfigure labels as appropriate. A 90-day period is provided for that purpose.

The Agency has identified some Federal rules that may be viewed to duplicate or overlap with this rule. Under pre-existing Federal laws and regulations, country of origin labeling is required.

Such requirements are enforced by the U.S. Customs and Border Protection (CBP) as authorized by the Tariff Act of 1930 and CBP regulations (19 U.S.C. 1304(a) and 19 CFR Part 134). This law requires that every imported item must be conspicuously and indelibly marked in English to indicate to the ''ultimate purchaser'' its country of origin.

Additionally, repackers are required by CBP to mark containers of repackaged imports with the English name of the country of origin. In the event that further reprocessing or material is added to the article in another country and results in a ''substantial transformation'' of the product, the other country becomes the country of origin within the meaning of CBP's labeling requirements, 19 CFR 134.1(b) and 134.11.

AMS has reviewed this rule under the Paperwork Reduction Act, 44 U.S.C. 3501–3520, and has determined that there are no additional information collection requirements imposed by this rule.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect because: (1) This rule has to be implemented because of an amendment by the Farm Bill to the Act and has an effective date of October 6, 2009; and (2) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Honey, Miscellaneous products, Debarment of services, Reporting and recordkeeping requirements, Approved identification, Country of origin labeling, and Prohibited uses of approved identification.

■ For the reasons set forth in the preamble, 7 CFR part 52 is amended as follows:

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 2. In part 52, § 52.54 is amended by adding paragraph (a)(4) to read as follows:

§ 52.54 Debarment of service.

(a) * * *

(4) *Country of origin labeling for packed honey.* (i) The use of a label or advertising material on, or in conjunction with, packaged honey that bears any official certificate of quality, grade mark or statement, continuous inspection mark or statement, sampling mark or statement, or any combination of the certificates, marks, or statements of the Department of Agriculture is hereby prohibited unless there appears legibly and permanently in close proximity (such as on the same side(s) or surface(s)) to the certificate, mark, or statement, and in at least a comparable size, the one or more names of the one or more countries of origin of the lot or container of honey, preceded by the words 'Product of' or other words of similar meaning.

(ii) A violation of the requirements of this section may be deemed by the Secretary to be sufficient cause for debarment from the benefits of the regulations governing inspection and certification only with respect to honey.

Dated: June 30, 2009.

Robert C. Keeney,

Acting Associate Administrator, Agricultural Marketing Service.

[FR Doc. E9–16029 Filed 7–7–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. APHIS–2006–0137]

RIN 0579–AC22

User Fees; Export Certification for Plants and Plant Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the user fee regulations by adjusting the fees charged for export certification of plants and plant products. We are increasing these user fees for fiscal years 2010 through 2012 to reflect the anticipated costs associated with providing these services during each year. We are also adding a new user fee for Federal export certificates for plants and plant products that an exporter obtains from a State or county cooperator in order to recover our costs associated with that service. Finally, we are making several nonsubstantive changes to the regulations for clarity. These changes will enable us to properly recover the costs of providing export certification services for plants and plant products.

DATES: *Effective Date:* October 1, 2009.

FOR FURTHER INFORMATION CONTACT: For information concerning program operations, contact Mr. Marcus McElvaine, Senior Export Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–8414. For information concerning rate development, contact Mrs. Kris Caraher, User Fee Section, Financial Services Branch, Financial Management Division, MRPBS, APHIS, 4700 River Road Unit 55, Riverdale, MD 20737–1232; (301) 734–0882.

SUPPLEMENTARY INFORMATION:

Background

On June 12, 2007, we published in the **Federal Register** (72 FR 32223–32230, Docket No. APHIS–2006–0137) a proposal [1] to amend the user fee regulations in 7 CFR 354.3 by adjusting the fees charged for export certification of plants and plant products. We proposed to increase these user fees for fiscal years (FYs) 2007 through 2012 to reflect the anticipated costs associated with providing these services during each year. We also proposed to add a new user fee for Federal export certificates for plants and plant products that an exporter obtains from a State or county cooperator in order to recover our costs associated with that service and to make some additional nonsubstantive changes to the regulations for greater clarity. The proposed changes were intended to enable us to properly recover the costs of providing export certification services for plants and plant products.

We solicited comments concerning our proposal for 60 days ending August 13, 2007. We received 75 comments by that date. They were from producers, exporters, research institutions, relief agencies, and representatives of State

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0137*.

and county governments. They are discussed below by topic.

A number of commenters stated that the adjustments to the existing fees, together with the addition of the proposed new fee for certificates issued on behalf of the Animal and Plant Health Inspection Service (APHIS) by State and county cooperators, would increase both the paperwork burden and the cost of doing business for exporters of various products, including seeds, hardwood lumber, cotton, beans, daylilies, and rice, thus making U.S. exports less competitive than they are now. It was also stated that the proposed fees would adversely affect small entities, since many of these exporters are small, according to the Small Business Administration's (SBA's) criteria.

We do not anticipate that the rule will entail any increase in the paperwork burden for the exporters referred to above, and the commenters did not provide details or examples to the contrary. Payment of the increased fees may increase the up-front costs of doing business for some entities; however, these entities benefit from the export certification services we provide, without which their goods would not be allowed into the importing countries. The fees are necessary in order for us to recover the cost of providing these services. Potential impacts of the fee adjustments on small entities, which we anticipate to be small, are discussed in the full economic analysis and in the summary of it presented later in this document. Because the costs APHIS incurs in providing export services vary according to the type or value of the shipment but are the same regardless of whether the exporter is a large or small entity, we cannot offer discounts to the latter if we are to recover our costs fully.

As we noted in the Supplementary Information section of the June 2007 proposed rule, the user fees supporting the Export Program have not been adjusted since 1996, and, due to inflation and other factors, we have not been fully recovering the cost of providing our export services in recent years. Since 1996, the increase in the cost of administering the Export Program has actually outpaced the inflation rate. Many new overseas markets for U.S. agricultural commodities have opened up since then, and U.S. exports have increased correspondingly, both in overall volumes and in the variety of commodities being exported. Our workload has increased due to the increase in volumes of exports, and the need to review and evaluate new commodities for export and new foreign country phytosanitary requirements has made the background work required to issue export certificates more complex.

Some commenters stated that the adjusted user fees will increase production costs for growers.

The cost of obtaining a phytosanitary certificate to export a commodity is not a direct production cost. While we do recognize that the adjusted fees will raise the costs of doing business, as noted earlier, affected entities also benefit from the export services we provide. Moreover, we need to recover fully the costs of providing those services. Because we last raised user fees in 1996, we have not been fully recovering these costs.

A few commenters expressed the concern that the increased fees could adversely affect the activities of hunger relief agencies and research institutions. Such institutions sometimes export high-value shipments but for noncommercial purposes.

We do not agree with this comment. Under most circumstances, shippers are subject to the higher commercial fees if the value of their shipment exceeds $1,250. *Commercial shipment* is defined in § 354.3(a), however, as a shipment for gain or profit. As long as they can provide the proper documentation to demonstrate that there are no profits associated with their shipments, relief agencies and research institutions are, and would continue to be, subject to the significantly lower rates applicable to noncommercial shipments even if the value of a shipment exceeds $1,250. To qualify for the noncommercial rate, the exporter, shipper, or broker must present one of the following documents: CCC 512, Notice of Commodity Availability; KC 269, Notice to Deliver; or KC 269–A, Forwarding Notice. Offering additional discounts or exemptions for relief agencies and research institutions would not allow us to recover the costs associated with the export certification services that we provide them.

Some commenters stated that our proposed fee increases were unjustified because many of the inspections that need to be performed before phytosanitary export certificates can be issued are conducted under compliance agreement by personnel not affiliated with APHIS' Plant Protection and Quarantine (PPQ) program.

Because it is still necessary for us to recover the costs associated with administering such compliance agreements, which we are not doing under the current fee structure, we will not be making any changes to the final rule as a result of these comments. Compliance agreements, which are voluntary, are intended to help exporters to ship their products more quickly. Such agreements do not alleviate APHIS' costs for reviewing certificates and overseeing and administering the export program.

A commenter suggested that increasing the export certification user fees may actually be detrimental to our efforts to prevent the spread of plant pests and diseases because exporters may attempt to ship their goods without phytosanitary certificates in order to avoid paying the fees.

Export certification is a service provided by APHIS to enable exporters to ship their goods to foreign countries that require such certification. An exporter who elects to ship without a phytosanitary certificate that is required by the importing country runs the risk of having the consignment rejected or destroyed.

Some commenters viewed our proposed incremental fee increases each fiscal year as potentially confusing and burdensome. It was suggested that, rather than raise the fees each year, we do so only once, setting each of them somewhere in the middle range of our projections. Thus, for example, rather than having our fees for commercial shipments rise from $99 to $106 over the period covered by the rulemaking, as we projected in the June 2007 proposed rule, we might set the fee at $103 initially and not make any further adjustments.

We do not agree that the incremental fee increases are confusing or burdensome. The regulations will clearly indicate that on set days, the fees will increase. **Federal Register** notices will be issued before the fees are increased each year to remind users of the upcoming adjustments. Setting the fees years in advance is actually beneficial to industry because it allows entities to plan and budget accordingly. Setting a single fee for the entire period covered by this rulemaking in the middle range of the fee scale, as suggested by the commenters, would not allow us to recover our costs fully in the later years.

One commenter stated that the initial fee increases should be implemented over 2 years, rather than 1, to soften their impact on industry.

We agree with this commenter that a 2-year phase-in period will be less burdensome to industry than an immediate implementation of the full fees, since, under the June 2007 proposed rule, the steepest, and thus potentially the most burdensome, proposed fee increases would have gone into effect in the first year of the period covered by the rulemaking.

Accordingly, under this final rule, the initial increases and the new administrative fee will be phased in over a 2-year period. For reasons discussed in greater detail below, the initial fee changes will go into effect at the beginning of FY 2010 rather than upon publication of this final rule. The fees for FY 2010 will be set at a level reflecting half the necessary increase, meaning that the fees will not cover our full costs during that fiscal year and that the remaining costs will have to be covered using other funds. The full fees will be in place at the beginning of FY 2011, which will be the first year in which they will provide for full recovery of export program costs.

A commenter noted that many exporters request multiple and often similar phytosanitary certificates at one time. Many exporters that ship on a regular basis batch their requests for phytosanitary certificates, a practice that makes the certification process easier and more economical for APHIS than would be the case when requests are submitted singly. Neither the existing nor the proposed fee structures recognize these savings, however. It was suggested that when requests for certificates are batched, thereby lowering APHIS' processing costs per certificate, charging the same fee for each certificate is not justified.

We will not be making any changes to the final rule in response to this comment, though we may reconsider this issue in the future. As explained in the preamble to the June 2007 proposed rule, we estimate our future costs based on data from prior fiscal years, and we calculate our user fees by dividing the sum of the costs of providing each service by the projected volumes. We base our fee calculations on the total estimated volume of certificates endorsed to arrive at the same fee for each fee category, regardless of the level of complexity of one certification versus another or the similarity of subsequent certifications to ones already completed. Adding a new certificate category and a correspondingly lower fee for certifications that are considered similar to ones already endorsed is not desirable due to our averaging approach to rate-setting and is contrary to our goal of having a simplified fee structure.

A commenter stated that if APHIS commits an error that makes it necessary to replace an export certificate, the shipper or producer should not be liable for any additional fees.

We agree with this comment. It has been, and will continue to be, our practice not to charge additional fees in such cases. We also would not charge additional fees when an error by a State or county cooperator that has issued a certificate on APHIS' behalf necessitates a replacement certificate. If a certificate, whether issued directly by APHIS or on behalf of APHIS by a State or county cooperator, needs to be replaced for other reasons, e.g., as a result of a request by an exporter, the normal fees would apply.

A commenter questioned the justification for the increases in our existing fees, stating that APHIS' costs for providing export certification services should decrease over time, rather than increase as we are projecting, due to technological advances, such as full implementation of the Phytosanitary Certificate Issuance and Tracking System (PCIT).

We do anticipate that the further development and wider use of the PCIT will enable us to realize some cost savings. As we noted in the June 2007 proposed rule, however, the fee adjustments are needed to enable us to recover the full costs of our export certification programs. These costs include ones that we may incur for the development of new technologies, as well as, among others, salaries and benefits, utilities, rents, and office equipment, and information systems development, all of which tend to rise from year to year. We review our costs and fees periodically, however, and will consider future rulemaking to reduce the fees if wider use of the PCIT results in sufficient cost savings to justify such a reduction. Any collections in excess of our costs will remain in the account to be used only for export phytosanitary services. The need for us to maintain a reasonable reserve in this account is discussed in greater detail below.

A commenter stated that, because of the size and magnitude of our proposed fees, they should be considered a tax.

We do not agree with this comment. A tax is money paid by the general public to support general Government operations. A user fee is money paid for a specific Government service by the beneficiary of that service and is designed to recover the costs of providing that service. The user fees covered by this rulemaking are paid by exporters who benefit from our export certification services, which enable them to have their goods allowed entry by the countries of destination. The fees, in turn, allow us to recover the full costs of providing these services.

A commenter stated that our export certification user fees should be applied only to offset the costs of the issuance of the actual certificate and not to cover departmental charges and other program costs. Therefore, according to this commenter, the fees should be lower than those we are proposing.

We do not agree with this comment. We have a congressional mandate to recover our full program costs by means of user fees. As explained in the proposed rule and noted above, these include direct labor and various other costs.

Some commenters stated that information on how we calculated our reserve funds was lacking in the proposed rule, while others questioned the need for the reserve or viewed the amounts to be set aside as excessive.

We do not agree with these commenters. As we noted in the June 2007 proposed rule, a reasonable reserve is needed to ensure that we have sufficient operating funds in cases of fluctuations in activity volumes or unanticipated events that could impact the export certification program. After calculating our projected costs for the period covered by this rulemaking using prior year costs, added inflationary factors, and planned new costs, we then added in the cost of maintaining that reserve. We anticipate that our user fees will generate a reserve fund of 5 percent per year, an amount that will provide for the maintenance of up to 3 to 5 months' operating expenses. We intend to monitor the reserve balance closely and propose adjustments in our fees as necessary to bring these user fees into line with our actual program costs. If we determine that any fees are too high and are contributing to unreasonably high reserve levels, we will undertake rulemaking to lower the fees as quickly as possible through our required rulemaking process. Conversely, if it becomes necessary to increase any fees because reserve levels are being drawn too low, we will undertake rulemaking to increase the fees.

A large number of commenters raised issues specific to the new administrative fee for certificates issued by State or county cooperators on APHIS' behalf. Commenters questioned the justification for the new fee and stated that the amount was too high, having been calculated using erroneous data on volumes. Others expressed concern over the financial and other burdens that may be faced by State and county governments in collecting the fees from exporters and remitting them to APHIS, the mechanics of the collection and remittance processes, and the legal and constitutional authority of the States and counties to collect such fees on behalf of APHIS.

Some commenters questioned the justification for this new fee on the grounds that most of the administrative costs of issuing export certificates are

already borne by States or counties and that APHIS does not provide significant oversight of the process of issuing phytosanitary certificates. In the view of these commenters, the administrative costs to APHIS for the issuance of export certificates on its behalf by State and county cooperators were not of sufficient magnitude to justify the fee.

The administrative fee is intended to cover the direct labor and administrative support costs incurred by APHIS when export certificates are issued on its behalf by State and county cooperators. Administrative support costs generally include the following: Local clerical and administrative activities, indirect labor hours (supervision of personnel and time spent doing work that is not directly connected with the service but which is nonetheless necessary); travel and transportation for personnel; supplies, equipment, and other necessary items; and training. Agency overhead is the pro rata share, attributable to a particular service of the management and support costs for all Agency activities. Included are the costs of providing budget and accounting services (tracking volumes, rate setting, policy *etc.*), management support, including the Administrator's office and support at the regional level, personnel services, public information service, and liaison with Congress. Additional costs that pertain specifically to phytosanitary certificates issued on APHIS' behalf by State and county cooperators include the costs APHIS incurs in training State and county personnel to issue the certificates, in maintaining the export requirement database (a database containing the shipping requirements of foreign countries, which serves as a resource for certifying officials and U.S. exporters), and in conducting reviews of the program.

A couple of commenters suggested that in instances where State or county fees would apply in addition to the APHIS administrative fee, APHIS should collect both fees and then reimburse the State or county for its portion on a quarterly or monthly basis. The commenters suggested that such a practice would help to minimize confusion and duplication of effort on the part of exporters, who would then only receive one invoice per certificate issued.

This functionality is now available within the PCIT. Additional information may be obtained from the PPQ program operations personnel listed under **FOR FURTHER INFORMATION CONTACT**.

Some commenters stated that our volume estimates for certificates issued by State and county cooperators appeared to be low. The proposed rule projected that a lower number of certificates would be issued by State and county cooperators in 2007 than the report by Kadix Systems, discussed in the June 2007 proposed rule, stated were actually issued in 2003. The commenters believed that the Kadix figure is a more accurate measure of the number of certificates issued by State and county cooperators than are our volume estimates. If the actual volumes are significantly higher than our estimates, the commenters stated, then the actual revenues that will accrue to APHIS as a result of these fees will also be considerably higher than what we projected. Therefore, we should set the administrative fee at a lower level.

After considering these comments, we reviewed our data in order to identify true export certificate user fee costs and volumes. We used prior year accounting data from the Financial Foundation Information System and the Financial Data Warehouse/Brio reports, which track and record expenses that support the Phytosanitary Export Certificate user fee program. We then added to those costs any planned new source funding, such as new staffing costs (plus support costs for new staffing) and automation initiatives (*e.g.,* further development of the PCIT and the export requirement database); training; and the pro rata share of the distributable accounts such as agency overhead, departmental charges, rent, economic assumptions, and a reasonable amount to be recovered in the reserve account. We then split our total costs for each fiscal year into each individual certification category. We based our projected volumes for certificates issued by State and county cooperators in FY 2007 on Work Accomplishment Data System data, which were provided by PPQ's Eastern and Western regional offices. Our projections allowed for a general trade increase of 1 percent each year. We assumed that 87 percent of customers, on average, will use the PCIT and that 13 percent will not. We split the volumes based on these percentages and divided the total costs by the volumes to calculate the administrative fee for phytosanitary certificates issued by States and counties using the PCIT and those not using the system.

We also determined, as a result of our review, that the number of State and county-issued Federal phytosanitary certificates had been underestimated and that, consequently, the proposed administrative fee was too high. We have therefore recalculated the administrative fee based on a revised State/county volume estimate of 367,137. For those States and counties issuing phytosanitary certificates through the PCIT, the administrative fee will initially be $3 per certificate under the 2-year phase-in and will subsequently rise to $6 in FYs 2011 and 2012. For those States and counties issuing paper phytosanitary certificates, the administrative fee will be $6 per certificate initially and will subsequently rise to $12 in FYs 2011 and 2012. Since all phytosanitary certificates issued directly by APHIS must be issued through the PCIT, the two-level administrative fee applies only to State- and county-issued export certificates.

The reason for adopting a two-tiered fee structure is because there are many more costs associated with paper phytosanitary certificates than there are with those issued electronically through the PCIT. Paper phytosanitary certificates entail additional costs for printing, distributing, controlling, and reviewing the paper certificates, as well as billing, collection, recordkeeping, storage, and archiving. On the other hand, PCIT-issued phytosanitary certificates will be maintained in the automated system, with issuance, collection, and accounting functions all handled at the same time. This process is much more cost-effective than issuing paper certificates.

Some commenters suggested that the new administrative fee is unjustified because it shifts costs from APHIS to States and counties.

Collecting the new administrative fee and remitting it to APHIS could entail some new administrative and recordkeeping costs for State and county governments, especially for those that do not use the PCIT. We anticipate, however, that in most cases, these costs will ultimately be recovered from exporters—the users and beneficiaries of our export services—in the form of increased State or county user fees.

Some representatives of State and county governments stated that collecting the administrative fee on APHIS' behalf could place a significant financial burden on States and counties, the magnitude of which we underestimated. Some States and counties, according to their representatives, do not have adequate personnel or funds to collect the fees.

While we recognize that there could be some additional burden on States and counties, States and counties can avoid the costs associated with collection activity by using the PCIT. The PCIT provides the States and counties with a more efficient and cost-effective means of collecting, tracking, and remitting the fees than does the use of paper certificates.

Some commenters indicated that States and counties may also lack mechanisms for tracking and collecting the administrative fee and remitting the revenues to APHIS. It was also stated that information was lacking in the proposed rule regarding how these processes will work. One commenter cited in particular a lack of detail on allowable time intervals for States or counties to remit fees to APHIS.

The June 2007 proposed rule, in § 354.3(g)(3)(i), indicated that the fee may be remitted directly to APHIS by the exporter through the PCIT, or, if the PCIT is not used, the State or county issuing the export certificate is responsible for collecting the administrative fee and remitting it monthly to APHIS at the address given.

A commenter stated that the proposed rule was unclear about whether State or county cooperators issuing paper certificates would be charged by APHIS for blocks of certificates.

The instructions for remittance to APHIS by States and counties of fees collected on APHIS' behalf for paper certificates, contained in § 354.3(g)(3) of the proposed rule, did not distinguish between remittances for individual certificates and blocks of certificates. States or counties may issue blocks of paper export certificates and charge the exporter for them in accordance with their own regulations.

A commenter suggested that we should either delay imposing the administrative fee for certificates issued by State and county cooperators until the PCIT is in wide use or we should use the submitted copies of Federal phytosanitary certificates to invoice shippers directly for the proposed fee.

We do not agree with this comment. The PCIT has been available for over 2 years, and its use is now mandatory for all APHIS-issued phytosanitary certificates. Over 20 percent of all phytosanitary certificates issued in 2007 were issued through the PCIT. The advantages offered by the system should provide ample incentive for all States and counties to adopt it.

Some commenters discussed issues of legal and/or constitutional authority in relation to the administrative fee. There are States and counties, it was suggested, that may not have the legal authority to collect the administrative fee on behalf of a Federal agency. Changes to State or county laws or regulations may be needed, in such cases, to allow for such collection activity. In addition, the States and counties are operating under memoranda of understanding with APHIS that do not direct them to collect the fees. One commenter questioned whether APHIS has the constitutional authority to mandate that a State or county charge a particular amount for an export certificate.

We will not be making any changes to the final rule in response to these comments. States and counties would not have to change their laws or regulations if the certificate is issued through the PCIT and the exporter can pay the administrative fee directly to APHIS. In addition, APHIS has been reaching out to State and county governments on this issue for more than 4 years in order to give those governments adequate time to prepare for the implementation of this new fee. We will continue to work with States and counties to help them overcome any legal hurdles to implementation.

A number of commenters raised issues related to the effect of the proposed rule on specific industries. Among those who commented were representatives of producers and exporters of such products as table grapes and tree fruit, hardwood, cotton, seeds, grain and oilseed, and southern pine lumber.

Some commenters stated that the industries they represented would be burdened more than others by the fee adjustments. It was suggested that California-based producers and exporters of table grapes and tree fruit would be particularly affected by the new administrative fee because those are the leading commodities exported from the State. A representative of the hardwood industry stated that hardwood exporters do not have the option of sending bulk shipments, unlike exporters of other agricultural commodities, due to the weight of the shipments and the phytosanitary requirements of foreign countries. The increase in the cost per container resulting from the adjusted fees, it was stated, would greatly increase the costs of doing business for hardwood exporters.

We do not agree with these comments. It is to be expected that producers and exporters of commodities such as table grapes and tree fruit, who use our export services frequently, will account for a larger share of the fees we collect than those that use the services less frequently. Neither that industry nor the hardwood industry is being singled out, however. The fees are the same for all individuals and/or entities and are designed to enable us to recover the full costs of providing the export certification services that both the table grapes and tree fruit and the hardwood industry use and from which they both benefit.

It was stated that export certification fees for cotton should not be raised. Commenters who took this position believed that the cotton industry's self-inspection programs justify keeping the fees as they are. It was also suggested that APHIS now has only a limited role in the certification procedure for cotton exports. The current compliance agreement between the industry and APHIS has transferred a significant amount of the workload and the costs from the agency to the industry. These transfers of workload and costs, according to the commenters, should be considered by APHIS in setting the fees.

As noted earlier in this document, voluntary compliance agreements do not eliminate the labor and other costs APHIS incurs in reviewing certificates and overseeing and administering the export program. We still need to recover those costs, whether or not a compliance agreement is in effect.

A commenter stated that the costs we incur for certification programs for cotton exports could be adequately managed if APHIS would direct the current export certification user fees collected from the cotton industry to develop the PCIT further.

We are currently working on improving and expanding the capabilities of the PCIT so that it can be of greater benefit to all users.

Commenters representing the seed industry stated that entities that are involved in the National Seed Health System or that use the PCIT should pay lower fees than other entities because both those programs help increase efficiency and cut costs for APHIS.

It is true that the National Seed Health System and the PCIT help increase efficiency and cut costs. We will consider this comment and may address the issue again in future rulemaking.

Representatives of the grain and oilseed industries stated that the export user fee adjustments should not apply to their commodities because most of the costs of the sampling, examination, and documentation needed to complete phytosanitary certification are provided for under separate user fees paid to USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA).

It is true that exporters of these commodities pay separate user fees to GIPSA and that GIPSA performs the majority of the work required to complete phytosanitary certification. At the present time, however, we do not have the ability to isolate the costs that remain for APHIS after GIPSA's work is performed and cannot exempt any specific industries or businesses from our user fee adjustments. Although we have attempted to minimize the cost of

our services, thereby keeping APHIS user fees at the lowest possible level, allowing such exemptions could result in shortfalls and service cutbacks. However, we will take these comments under consideration and reassess our fees as needed.

A commenter advocated eliminating phytosanitary inspections for southern pine lumber, and adopting the same policy as we use with heat treatment certificates for lumber destined for European Union countries.

Such inspections are performed to meet the requirements of the importing countries rather than those of APHIS. APHIS is not able to drop or change these inspection requirements unilaterally.

Some commenters asserted that the June 2007 proposed rule did not provide enough information on how we calculated our projected costs and fees. One commenter stated that not enough information was presented in the proposed rule to determine which of 12 new cost categories cited by the Kadix report were included in determining our base costs. Another commenter cited a lack of information on costs attributable to new staffing and information technology initiatives. It was suggested that users might be more receptive to new or increased user fees if they could a see more detailed breakdown of our costs.

We do not agree with this comment. The **SUPPLEMENTARY INFORMATION** section of the June 2007 proposed rule contained an extensive discussion of our user fee accounting procedures. This discussion included an explanation of the types of program costs we incur and our procedures for identifying prior year costs and projecting future costs. We also included a table that contained estimated costs, broken down by category, for FY 2007.

A commenter stated that the process of developing the June 2007 proposed rule was flawed. Industry input was lacking, according to this commenter, and the process as a whole should have been more transparent.

We have followed our standard rulemaking process, including allowing stakeholders an opportunity to comment on our proposed changes. This final rule reflects our consideration of stakeholders' comments.

Miscellaneous

The June 2007 proposed rule contained projected export certification user fees for FYs 2007 through 2012. Because FY 2009 is more than half complete, this final rule contains projected fees for the period from FY 2010 through FY 2012. We considered beginning the phase-in of the new fees prior to October 1, 2009, which marks the beginning of FY 2010, and then raising the fees to the full amount on that date. We decided against that alternative, however, because it would have entailed two fee increases within a relatively short time period. We estimate the opportunity loss of beginning the phase-in of the new fees on October 1, 2009, as opposed to earlier, to be less than 2.9 percent of the program's operational value, an amount we do not consider significant enough to warrant the possible confusion that increasing the fees twice within a short period of time could cause. The tables in § 354.3(g) in this final rule have been revised accordingly, as have our revenue projections in the economic summary below and in the full economic analysis.

Additionally, in this final rule, § 354.3(h), which lists circumstances under which APHIS will issue refunds of, or credits for, user fees to shippers who pay for blocks of export certificates to cover commercial shipments, is removed and reserved. As noted above, we are now using the PCIT whenever we issue export certificates directly to shippers and thus are no longer issuing blocks of paper certificates.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Order 12866, and a final regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (*see* footnote 1 in this document for a link to Regulations.gov) or by contacting the people listed under **FOR FURTHER INFORMATION CONTACT.**

Under this rule, the user fee for the certification of commercial or re-export shipments will increase from $50 to $77 in FY 2010. With additional yearly adjustments, the fee will increase to $104 in FY 2011 and $106 in FY 2012. This rule will also increase the user fee for low-value commercial or re-export shipments (valued at less than $1,250) and noncommercial shipments, from $23 to $42 in FY 2010, and through yearly increases, to $60 in FY 2011 and $61 in FY 2012. The user fee for a replacement certificate will increase from $7 to $11 in FY 2010 and then to $15 in subsequent years. In addition, this rule will establish an administrative user fee for each certificate issued on behalf of APHIS by a U.S. State or county. This fee for FY 2010 will be set at $3 when a certificate is issued through the PCIT and at $6 for a paper certificate. These fees will rise to $6 and $12, respectively, the following year.

The changes set forth in this rule are intended to recover the full costs of providing our export certification services, which are currently being provided for less than their actual costs. As noted earlier, our export user fees have not been adjusted since 1996. The volume of exports of agricultural commodities has been growing since then. More and more foreign countries are requiring phytosanitary certification for the products they import, and their phytosanitary requirements are becoming increasingly numerous and complex. All of these factors contribute to increasing the costs to APHIS of providing these services. If APHIS were to continue to collect user fees using the rates in effect prior to this rulemaking, over the time period covered by this rule, total collections would be approximately $25 million, which is nearly $33 million below the level of the projected costs of the program over that timeframe. This difference represents the shortfall in cost recovery that would occur absent the fee changes.

The export certification services covered in this rule are provided to exporters of plants and plant products. These exporters include those entities shipping plants and plant products to foreign destinations for commercial as well as noncommercial purposes. These exporters will be affected by this rule. In addition, State and county governments providing export certification services will be affected.

A wide variety of commodities are potentially eligible for certification under the APHIS export certification program. Eligibility requirements vary by commodity and, in some cases, by the degree of processing or treatment needed. Eligible commodities generally include live plants, fresh and some dried fruits, vegetables and nuts, unroasted coffee, cereal grains, milling products, oil seeds, raw sugar, tobacco, wood, and cotton. We cannot place a specific value on the commodities that have been certified for export. However,

in 2007, exports of the covered commodity categories were valued at nearly $57 billion. In addition, products in these commodity categories valued at nearly $2 billion were re-exported in 2007.

The user fee increases in this rule should increase collections in each year covered. The increased revenues will go to cover the projected costs of administering the program and to build a reserve to ensure that we have sufficient operating funds in cases of program cessation or fluctuations in activity volumes. The initial fee increases cover cost increases that have occurred since the last revision of these fees, in addition to some of the cost increases expected to occur in FY 2010. In FY 2012, the new fees for commercial and re-export certification could generate $9.2 million in additional revenue; the new fees for noncommercial and low-value commercial and re-export certification could generate $333,000 in additional revenue; the new fee for replacing any certificate could generate $58,000 in additional revenue; and the new fee for administering State- and county-issued certificates could generate an additional $2.6 million in revenue.

To the extent that the changes in user fees impact exporters' operational costs, any entity that utilizes APHIS' export certification services subject to user fees will be impacted. The degree to which any entity may be affected depends on its market power (the ability to which costs can be either absorbed or passed on to buyers). While the lack of information on profit margins and operational expenses of the affected entities and the supply responsiveness of the affected industries prevents the precise prediction of the scale of impacts, some conclusions on overall impacts to domestic and international commerce can be drawn.

The percentage increases in user fees will be large. In all cases, the increases will at least double the existing user fees by FY 2012. About one-half of the increases will occur in FY 2010. If the increase in user fees cannot be passed on, the profit margins of some entities may decline as user fees are increased. However, these fees have not been updated since 1996, and there are now considerable differences between the true costs of providing export certification services and the user fees APHIS has been charging. When a user fee does not cover all associated costs, those costs are shifted away from those receiving and benefiting from the service and onto APHIS, and thus, ultimately, to the taxpayer.

As noted above, this rule will increase the user fee for commercial export and re-export certification from $50 to $77 in FY 2010. Subsequent increases will raise the fee to $106 by FY 2012. These changes could generate additional annual collections of $9.2 million in FY 2012. To put these numbers in perspective, this fee category is projected to generate total collections of $17.3 million in FY 2012. This equates to less than 0.03 percent of the $58 billion in eligible commodities that were exported or re-exported in 2007.

Exporters of plants and plant products are the domestic entities most affected by this rule. Exporters of plants and plant products are part of the wholesale trade sector of the U.S. economy. These entities either sell goods on their own account (export merchants) or arrange for the sale of goods owned by others (export agents and brokers). While the increase in the commercial export and re-export certification fee is large in percentage terms, it is very small relative to the revenues generated by exporters of plants and plant products. This is evident from the average firm revenues for some of the main industries that will be affected by the rule. By this measure the impact of the fee increases on entities should be limited. Exporters of wood fall under the North American Industry Classification System (NAICS) code 423310, ''Lumber, plywood, millwork, and wood panel merchant wholesalers.'' The average firm in this category had sales of $11.6 million in 2002. Exporters of fruits and vegetables fall under NAICS code 424480, ''Fresh fruit and vegetable merchant wholesalers.'' The average firm in this category had sales of $10 million in 2002. Exporters of grains, such as corn, wheat, oats, barley, and unpolished rice, dry beans, and soybeans fall under NAICS code 424510, ''Grain and field bean merchant wholesalers.'' The average firm in this category had sales of $28 million in 2002. Exporters of leaf tobacco are covered under NAICS code 4245902, ''Leaf tobacco merchant wholesalers.'' The average firm in this category had sales of $8.1 million in 2002. Exporters of cotton are under NAICS code 4245904, ''Cotton merchant wholesalers.'' The average firm in this category had sales of $35.3 million in 2002. Exporters of plant seeds and plant bulbs are under NAICS code 424910, ''Farm supplies merchant wholesalers.'' The average firm in this category had sales of $11 million. Exporters of flowers and nursery stock are under NAICS code 424930, ''Flower, nursery stock, and florists' supplies merchant wholesalers.'' The average firm in this category had sales of $2.4 million in 2002. Exporters of various other farm product raw materials, such as Christmas trees, fall under NAICS code 4249904, ''Other nondurable goods merchant wholesalers.'' The average firm in this category had sales of $2.2 million in 2002.

The total impact of the fee increases on an exporter will be directly proportional to their participation in international trade. The greater the number of internationally shipped consignments in need of certification, the more export certification fees will be incurred to facilitate that movement.

Consignments presented for export certification range widely in value and shipment size, even within the same general commodity classification. Therefore, the impact of the fee increases on specific commodity exports cannot be usefully generalized. The impact will vary depending on the size and value of the consignment. An exporter seeking certification for a consignment that comprises an entire loaded container ship will be less impacted than one seeking certification for a single shipping container of the same commodity. With a higher-valued commodity, the fee increase will be smaller relative to the value of the consignment than it will be for a lower-valued commodity of the same size shipment.

This fee will increase by a total of 108 percent over the covered period, but the total dollar value of the fee increase, $56, represents a small fraction of the value of many consignments. To put the fee increase in perspective, a few commodity examples based on single container consignments are presented below. In order to present consistent examples, we assume that a shipment presented for certification is represented by the capacity of a single shipping container. It should be noted that in many cases this will give a significant overestimate of the impact of the fee changes on a given shipment as many agricultural products are shipped in bulk consignments. Bulk carriers have capacities of 10 to 1,000 or more times that of a single shipping container. Certification fees incurred and their significance as part of the overall costs of exporting may be reduced by consolidating formerly multiple consignments into single consignments for certification.

A 40′ by 9′6″ shipping container has a capacity of about 26,040 kilograms (kg) or 76.6 cubic meters (m^3). In 2006, the average value of corn shipments from the U.S. was $0.12 per kg. Therefore, a 26,040 kg shipment of corn

would have been valued at $3,222. The total fee increase over the entire time period covered in this rule represents 1.7 percent of this value. In 2006, the average value of wheat exports from the United States was $0.18 per kg. Thus, a 26,040 kg shipment would have been valued at $4,707. The total fee increase over the entire time period covered in this rule represents 1.2 percent of this value. The average value of fresh grapes exported from the United States in 2006 was $1.79 per kg. Therefore, a half-container, or 13,020 kg, shipment of grapes (the value is calculated in this manner due to the packaging requirements for transporting fresh grapes), would have been valued at $23,241. The total fee increase over the entire time period covered in this rule represents 0.2 percent of this value. In 2006, the average value of logs exported from the United States was $150.16 per m^3. Therefore, a 76.6 m^3 shipment of logs would have been valued at $11,502. The total fee increase over the time period covered in this rule represents 0.5 percent of this value. The average value of railroad crossties exported from the United States in 2006 was $93.83 per m^3. Thus, a 76.6 m^3 shipment of crossties would have been valued at of $7,187. The total fee increase over the time period covered in this rule represents 0.8 percent of this value. The average value of sawn lumber exported from the United States in 2006 was $421.29 per m^3. Therefore, a 76.6 m^3 shipment of sawn lumber would have been valued at $32,271. The total fee increase over the time period covered in this rule represents 0.17 percent of this value.

If a commercial export or re-export shipment is valued at less than $1,250, the fee for certification will increase in FY 2010 from $23 to $42. The new fee will represent at least 3.3 percent of the value of the shipment. The impact of the fee increase may be mitigated to the degree that multiple low-value shipments can be consolidated into single shipments for certification.

This rule will increase the user fee for noncommercial export and re-export certification from $23 to $42 in FY 2010, to $60 in FY 2011, and to $61 by FY 2012. Combined with the changes for low-value commercial shipments (valued at less than $1,250), these changes could generate additional annual collections of about $333,000 in FY 2012. These fees will increase by a total of 161 percent. However, it is estimated that only about 8,500 of these certificates are issued annually.

This rule will increase the user fee for replacing any export certificate from $7 to $11 in FY 2010 and to $15 in FYs 2011 and 2012. These changes could generate additional annual collections of about $58,000. While this increase is a doubling of the fee, its impact should be small, as there are fewer than 8,000 certificates replaced annually.

The Regulatory Flexibility Act requires that agencies specifically consider the economic impact of their rules on small entities. As we have previously noted, exporters of plants and plant products are the domestic entities most affected by this rule and are part of the wholesale trade sector of the U.S. economy. The overwhelming majority of U.S. wholesalers of plants and plant products (ranging from 96 to 99 percent for the various NAICS categories discussed above) fall under the SBA's definition of small entities. The total impact of the changes contained in this rule should be small for these entities. The fee changes represent a tiny fraction of the value of the shipments of plants and plant products. Exports and re-exports of eligible commodities were valued at more than $58 billion in 2007, as noted previously. By contrast, the total increase in annual collections from user fees in this rule will be about $12 million by FY 2012.

While the increases in the fees are large in percentage terms, they are small relative to the revenues generated by wholesalers of plants and plant products. This is evident from the average revenues of firms with fewer than 100 employees in some of the main industries that will be affected by the rule. By this measure, the impact of the fee increases on entities should be limited. About 58 percent of lumber wholesalers (NAICS 423310) had between 5 and 100 employees in 2002. Average annual sales by these firms were $9.8 million. About 37 percent had between 5 and 20 employees and average annual sales of about $5 million. About 95 percent of fresh fruit and vegetable wholesalers (NAICS 424480) had fewer than 100 employees in 2002. Average annual sales by these firms were $7.1 million. About 74 percent had fewer than 20 employees and average annual sales of about $4 million. About 98 percent of grain and field bean wholesalers (NAICS 424510) had fewer than 100 employees in 2002. Average annual sales by these firms were $11.9 million. About 82 percent had fewer than 20 employees and average annual sales of $6.5 million. About 85 percent of leaf tobacco wholesalers (NAICS 4245902) had fewer than 10 employees in 2002. Average annual sales by these firms were $3.1 million. About 80 percent of cotton wholesalers (NAICS 4245904) had fewer than 10 employees in 2002. Average annual sales by these firms were $10.2 million. About 69 percent of farm supplies wholesalers (NAICS 424910) had fewer than 10 employees in 2002. Average annual sales by these firms were $1.7 million. Average annual sales of flowers and florist supplies wholesalers (NAICS 424930) were $2.7 million in 2002. About 83 percent of other nondurable goods wholesalers (NAICS 4249904) had fewer than 10 employees in 2002. Average annual sales by these firms were $976,000. Another 6 percent of these firms had from 20 to 99 employees. Average annual sales by these firms in 2002 were $11 million.

This rule will impose an administrative user fee for each certificate issued on behalf of APHIS by a State or county. This fee will be set at $3 when a certificate is issued through the PCIT in FY 2010 and at $6 in FYs 2011 and 2012. The fee for a paper certificate will be $6 in FY 2010 and $12 thereafter. States and counties issue a significant percentage of the phytosanitary certificates written. APHIS' activities support the State and county operations, as well as nationwide export certification functions. Because we have not been charging a user fee for such certificates, we have not been recovering our costs for printing, distributing, and tracking the paper certificates that we provide to the States and counties to issue on our behalf or our associated overhead costs. The users who obtain export certification from a State or county only pay for the State or county's costs to deliver the certificate, and nothing to support the program at the Federal level.

These new administrative fees could generate additional annual collections of $2.6 million in FYs 2011 and 2102. States and counties that do not use the PCIT are likely to incur administrative and recordkeeping costs in collecting the administrative fees associated with paper certificates and remitting them to APHIS. To the extent that a State or county increases the fees it charges to incorporate the administrative fee and passes the cost on to exporters, it will shift the burden of the fee to the user. However, the additional costs to States and counties should be low because, in most cases, mechanisms are already in place for collecting export certification fees. In addition, the PCIT is available for use by States and counties to issue certificates, thus enabling them to avoid the administrative and recordkeeping costs referred to above.

Any fee charged for export certification services performed by a

State or county is determined by the individual State or county performing the service. Thirty-five States have charges for issuing certificates. Twelve States have fee structures that duplicate APHIS' fee structure. Currently, States and counties charge from $0 to $212 for a commercial certificate, with the average charge about $28; and from $0 to $50 for a noncommercial certificate, with the average charge about $19. States and counties currently charge from $0 to $75, with the average charge about $16, to replace a commercial certificate, and from $0 to $50, with an average of about $15, to replace a noncommercial certificate. These fees could change following the implementation of this rule to incorporate the Federal administrative fee.

About 70 percent of certificates issued in California in 2003 were written in eight counties, six of which have rate structures currently higher than those of APHIS. Only 10 States and 2 California counties do not have current legislative authority to charge for certificates. These 10 States and 2 counties account for approximately one-tenth of the certificates issued by States and counties in a given year.

In assessing the need for this rule, we considered alternatives to the chosen course of action. These alternatives are discussed below.

One alternative to this rule would have been to leave the regulations unchanged. In this case, the fees would remain unchanged. However, these fees were last updated in 1996 and no longer recover the full cost of providing certification services. Routine increases in the cost of doing business, such as inflation, replacing equipment, and maintaining databases, have occurred since the last update, and volumes have increased as well. If APHIS were to continue to collect user fees at the current rates in FY 2010 through FY 2012, total collections would be about $33 million short of projected program costs over that period. Therefore, this alternative was rejected.

Another alternative to this rule would have been not to add an administrative user fee for each certificate issued on behalf of APHIS by a U.S. State or county official. However, APHIS' activities support the State and county operations, as well as the national export certification program. The costs to APHIS that are associated with State- and county-issued certificates have not been recovered up to now. The users who obtain export certification from a State or county only pay for the State or county's costs, and nothing to support the program at the national level. Therefore, this alternative was not pursued.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 354

Animal diseases, Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

■ Accordingly, we are amending 7 CFR part 354 as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

■ 1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 354.3 is amended as follows:

■ a. In paragraph (a), by removing the definitions of *export certificate for processed plant products, phytosanitary certificate,* and *phytosanitary certificate for reexport,* and adding a new definition of *certificate,* in alphabetical order, to read as set forth below.

■ b. In paragraph (g), by removing paragraphs (g)(2) and (g)(5); by redesignating paragraphs (g)(3) and (g)(4) as (g)(4) and (g)(5), respectively; and by revising paragraph (g)(1) and adding new paragraphs (g)(2) and (g)(3) to read as set forth below.

■ c. By removing and reserving paragraph (h).

§ 354.3 User fees for certain international services.

(a) * * *

* * * * *

Certificate. Any certificate issued by or on behalf of APHIS describing the condition of a shipment of plants or plant products for export, including but not limited to Phytosanitary Certificate (PPQ Form 577), Export Certificate for Processed Plant Products (PPQ Form 578), and Phytosanitary Certificate for Reexport (PPQ Form 579).

* * * * *

(g) * * *

(1) For each certificate issued by APHIS personnel, the recipient must pay the applicable AQI user fee at the time and place the certificate is issued.

(2) When the work necessary for the issuance of a certificate is performed by APHIS personnel on a Sunday or holiday, or at any other time outside the regular tour of duty of the APHIS personnel issuing the certificate, in addition to the applicable user fee, the recipient must pay the applicable overtime rate in accordance with § 354.1.

(3)(i) Each exporter who receives a certificate issued on behalf of APHIS by a designated State or county inspector must pay an administrative user fee, as shown in the following table. The administrative fee can be remitted by the exporter directly to APHIS through the Phytosanitary Certificate Issuance and Tracking System (PCIT), provided that the exporter has a PCIT account and submits the application for the export certificate through the PCIT. If the PCIT is not used, the State or county issuing the certificate is responsible for collecting the fee and remitting it monthly to the U.S. Bank, United States Department of Agriculture, APHIS, AQI, P.O. Box 979043, St. Louis, MO 63197–9000.

Effective dates	Amount per shipment	
	PCIT used	PCIT not used
October 1, 2009, through September 30, 2010	$3	$6
October 1, 2010, through September 30, 2011	6	12
Beginning October 1, 2011	6	12

(ii) The AQI user fees for an export or reexport certificate for a commercial shipment are shown in the following table.

Effective dates	Amount per shipment
October 1, 2009, through September 30, 2010	$77
October 1, 2010, through September 30, 2011	104
Beginning October 1, 2011	106

(iii) The AQI user fees for an export or reexport certificate for a low-value commercial shipment are shown in the following table. A commercial shipment is a low-value commercial shipment if the items being shipped are identical to those identified on the certificate; the shipment is accompanied by an invoice which states that the items being shipped are worth less than $1,250; and the shipper requests that the user fee charged be based on the low value of the shipment.

Effective dates	Amount per shipment
October 1, 2009, through September 30, 2010	$42
October 1, 2010, through September 30, 2011	60
Beginning October 1, 2011	61

(iv) The AQI user fees for an export or reexport certificate for a noncommercial shipment are shown in the following table.

Effective dates	Amount per shipment
October 1, 2009, through September 30, 2010	$42
October 1, 2010, through September 30, 2011	60
Beginning October 1, 2011	61

(v) The AQI user fees for replacing any certificate are shown in the following table.

Effective dates	Amount per certificate
October 1, 2009, through September 30, 2010	$11
October 1, 2010, through September 30, 2011	15
Beginning October 1, 2011	15

* * * * *

Done in Washington, DC, this 30th day of June 2009.

Cindy Smith,

Acting Under Secretary for Marketing and Regulatory Programs.

[FR Doc. E9–16146 Filed 7–7–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[Doc. #AMS–CN–09–0015; CN–09–002]

Cotton Board Rules and Regulations: Adjusting Supplemental Assessment on Imports (2009 Amendments)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the Cotton Board Rules and Regulations by increasing the value assigned to imported cotton for calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. An amendment is required to adjust the assessments collected on imported cotton and the cotton content of imported products to be the same as those paid on domestically produced cotton. In addition, AMS is adding and changing Harmonized Tariff Schedule (HTS) statistical reporting numbers that were amended since the last assessment adjustment.

DATES: *Effective Date:* August 7, 2009.

FOR FURTHER INFORMATION CONTACT: Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Room 2639–S, Washington, DC 20250–0224, telephone (202) 720–6603, facsimile (202) 690–1718, or e-mail at *Shethir.Riva@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Cotton Research and Promotion Act (7 U.S.C. 2101–2118) (''Act'') provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

Background

The Cotton Research and Promotion Act Amendments of 1990 enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624) on November 28, 1990, contained two provisions that authorized changes in the funding procedures for the Cotton Research and Promotion Program.

These provisions are: (1) The assessment of imported cotton and

cotton products; and (2) termination of the right of cotton producers to demand a refund of assessments.

This rule increases the value assigned to imported cotton in the Cotton Board Rules and Regulations (7 CFR 1205.510(b)(2)). The total value is determined by a two-part assessment. The first part of the assessment is levied on the weight of cotton produced or imported at a rate of $1 per bale of cotton, which is equivalent to 500 pounds, or $1 per 226.8 kilograms of cotton. The second value is used to calculate the supplemental assessments on imported cotton and the cotton content of imported products. Supplemental assessments are levied at a rate of five-tenths of one percent of the value of domestically produced cotton, imported cotton, and the cotton content of imported products. The supplement assessment is combined with the per bale equivalent to determine the total value and assessment of the imported cotton or cotton-containing products.

The Cotton Research and Promotion Rules and Regulations provide for assigning the calendar year weighted average price received by U.S. farmers for Upland cotton to represent the value of imported cotton. This is so that the assessment on domestically produced cotton and the assessment on imported cotton and the cotton content of imported products is the same. The source for the average price statistic is *Agricultural Prices,* a publication of the National Agricultural Statistics Service (NASS) of the U.S. Department of Agriculture (USDA). Use of the weighted average price figure in the calculation of supplemental assessments on imported cotton and the cotton content of imported products will yield an assessment that is the same as assessments paid on domestically produced cotton.

The current value of imported cotton as published in the **Federal Register** (73 FR 69521) for the purpose of calculating assessments on imported cotton is $0.009874 per kilogram, which is equivalent to 0.9874 cents per kilogram. Using the Average Weighted Price received by U.S. farmers for Upland cotton for the calendar year 2008, the new value of imported cotton is $0.01088 per kilogram, which is equivalent to $1.0880 cents per kilogram, or $0.001006 per kilogram more than the previous value.

An example of the complete assessment formula and how the figures are obtained is as follows:

One bale is equal to 500 pounds.

One kilogram equals 2.2046 pounds.

One pound equals 0.453597 kilograms.

One Dollar per Bale Assessment Converted to Kilograms

A 500-pound bale equals 226.8 kg. (500 × .453597).

$1 per bale assessment equals $0.002000 per pound (1/500) or $0.004409 per kg. (1/226.8).

Supplemental Assessment of 5/10 of One Percent of the Value of the Cotton Converted to Kilograms

The 2008 calendar year weighted average price received by producers for Upland cotton is $0.587 per pound or $1.294 per kg. (0.587 × 2.2046).

Five tenths of one percent of the average price in kg. equals $0.006471 per kg. (1.294 × .005).

Total Assessment

The total assessment per kilogram of raw cotton is obtained by adding the $1 per bale equivalent assessment of $0.004409 per kg. and the supplemental assessment $0.006471 per kg. which equals $0.01088 per kg. and is equivalent to $1.0880 cents per kilogram.

The current assessment on imported cotton is $0.009874 per kilogram of imported cotton. The new assessment is $0.01088, which is equivalent to $1.0880 cents per kilogram, an increase of $0.001006 per kilogram. This increase reflects the increase in the Average Weighted Price of Upland Cotton Received by U.S. Farmers during the period January through December 2008.

Since the value of cotton is the basis of the supplemental assessment calculation and the figures shown in the right hand column of the Import Assessment Table in section 1205.510(b)(3) are a result of such a calculation, the figures in this table have been revised. These figures indicate the total assessment per kilogram due for each HTS statistical reporting number subject to assessment.

AMS also compared the current import assessment table with the U.S. International Trade Commission's (ITC) 2009 HTS and identified HTS statistical reporting numbers that have been changed or amended by ITC. The HTS statistical reporting number that currently appears in section 1205.510(b)(3) is listed below on the left side of the table with the new HTS statistical reporting number on the right side of the table. The new numbers corresponds with the same ITC category, but with the amended number as it appears in ITC's HTS.

Current HTS	New HTS
5205420020	5205420021
5205440020	5205440021

In addition, AMS removed HTS statistical reporting numbers from section 1205.510(b)(3) that were no longer in the ITC official HTS on November 19, 2008 (73 FR 69521) and has worked with ITC to identify the new corresponding HTS statistical reporting numbers that ITC is using in the 2009 HTS. In many instances, the number is a replacement of a previous number and has no impact on the physical properties or cotton content of the product involved. In other instances, the HTS statistical reporting numbers were expanded and are now represented by two HTS statistical reporting numbers. Below on the left are the numbers removed on November 19, 2008 (73 FR 69521), and on the right are the new numbers that ITC currently is using and whose categories correspond to the previously removed HTS statistical reporting numbers from 1205.510(b)(3).

Removed HTS No.	New HTS No.
5208530000	5208591000
5210120000	5210191000
5211210025	5211202125
5211210035	5211202135
5211210050	5211202150
5211290090	5211202990
5604900000	5604909000
5702991010	5702990500
5702991090	5702991500
6109100005	6109100004
6109100009	6109100004
	6109100011
6110202065	6110202067
	6110202069
6110202075	6110202077
	6110202079
6111206040	6111206050
	6111206070
6111305040	6111305050
	6111305070
6115198010	6115101510
	6115298010
6115929000	6115959000
	6115103000
6115936020	6115966020
6203424005	6203424006
6203424010	6203424011
6203424015	6203424016
6203424020	6203424021
6203424025	6203424026
6203424030	6203424031
6203424035	6203424036
6203424040	6203424041
6203424045	6203424046
6203424050	6203424051
6203424055	6203424056
6203424060	6203424061
6204624005	6204624006
6204624010	6204624011
6204624020	6204624021
6204624025	6204624026
6204624030	6204624031
6204624035	6204624036
6204624040	6204624041
6204624045	6204624046
6204624050	6204624051
6204624055	6204624056
6204624060	6204624061

Removed HTS No.	New HTS No.
6204624065	6204624066
6205202015	6205202016
6205202020	6205202021
6205202025	6205202026
6205202030	6205202031
6205202035	6205202036
6205202046	6205202047
6205202050	6205202051
6205202060	6205202061
6205202065	6205202066
6205202070	6205202071
6205202075	6205202076
6206303010	6206303011
6206303020	6206303021
6206303030	6206303031
6206303040	6206303041
6206303050	6206303051
6206303060	6206303061
6303110000	6303191100

A proposed rule was published on April 10, 2009, with a comment period of April 10, 2009, through May 11, 2009 (74 FR 16331). AMS received one comment from a trade association representing American manufacturers, brands, distributors, retailers, and importers of textile and apparel products, and related service providers.

The comment stated that the fee increase is inappropriately timed and current economic conditions argue against increasing the cotton fee. AMS disagrees. Section 1205.335(b)(2) of the Order provides that the rate of the supplemental assessment on imported cotton shall be the same as that paid on cotton produced in the United States. Further, the regulations at section 1205.510(b)(2) issued under the Order provide for assigning the calendar year weighted average price received by U.S. farmers for Upland cotton to represent the value of imported cotton.

The source for the average price statistic is *Agricultural Prices,* a publication of the National Agricultural Statistic Service (NASS) of the Department. Use of the weighted average price figure in the calculation of supplemental assessments on imported cotton and cotton content of imported products will yield an assessment that is the same as assessments paid on domestically produced cotton. The NASS numbers for Upland cotton for 2008 were used in this rulemaking, while the NASS numbers for 2007 were used in the final rule published in 2008 (73 FR 69521). One favorable comment was received from a cotton producer association in the 2008 rulemaking.

The comment received in this rulemaking also stated that AMS is not obligated to make an adjustment now and cited past years in which no adjustments were made. The years 2004 through 2007 were noted. However, AMS issued a proposed rule for the 2004 amendments to the supplemental assessment in January 2005 (70 FR 2034). The proposal not only included the 2004 adjustment to the supplemental assessment in accordance with the regulations but also proposed that the total rate of assessment per kilogram for imported cotton be calculated by adding together the $1 per bale equivalent assessment and the supplemental assessment, and adjusting the sum to account for the estimated amount of U.S. cotton contained in imported textile products. The proposal was to address changes in the composition of U.S. cotton use and the anticipated ending of U.S. textile quotas. The proposal was made after an analysis of global cotton data and development of a comprehensive calculation to determine the percentage of U.S. cotton contained in total assessable cotton imports.

The 2005 proposal generated one comment from the same trade association that commented in this action. In its 2005 comment, the commenter advised AMS to reconsider the then proposed formulation and do further work that would more accurately identify the amount of U.S. cotton contained in imported cotton products. As published in the November 20, 2006 **Federal Register**, AMS withdrew the proposed rule (71 FR 67072). That document noted that AMS was withdrawing the 2005 proposed rule to continue to evaluate the importer assessment issue and garner additional stakeholders' input and economic data. Adjustments to the supplemental assessment then resumed with the 2008 amendments based on NASS data for calendar year 2007.

Finally, the commenter asserted that the proposed rule in this action would not have been put forward but for the change in the number of producer seats on the Cotton Board mandated by section 14202 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246), more commonly known as the 2008 Farm Bill. AMS disagrees. Section 14202 of the 2008 Farm Bill amends the Cotton Research and Promotion Act by designating the States of Kansas, Virginia and Florida as cotton-producing States beginning with the 2008 crop. This amendment to the Act is the result of an act of Congress and changes the number of cotton-producing States only.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601–612], AMS examined the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be unduly or disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (importers) as having receipts of no more than $7,000,000. An estimated 13,000 importers are subject to the rules and regulations issued pursuant to the Cotton Research and Promotion Order. Most are considered small entities as defined by the Small Business Administration.

This final rule would only affect importers of cotton and cotton-containing products and would raise the assessments paid by the importers under the Cotton Research and Promotion Order. The current assessment on imported cotton is $0.009874 per kilogram, which is equivalent to $0.9874 cents per kilogram, of imported cotton. The new assessment is $0.01088, which is equivalent to $1.0880 cents per kilogram and was calculated based on the 12-month average of monthly weighted average prices received by U.S. cotton farmers. Section 1205.510, ''Levy of assessments'', provides ''the rate of the supplemental assessment on imported cotton will be the same as that levied on cotton produced within the United States.'' In addition, section 1205.510 provides that the 12-month average of monthly weighted average prices received by U.S. farmers will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton.

Under the Cotton Research and Promotion Program, assessments are used by the Cotton Board to finance research and promotion programs designed to increase consumer demand for Upland cotton in the United States and international markets. In 2008, producer assessments totaled $29.2 million and importer assessments totaled $25.9 million. According to the Cotton Board, should the volume of cotton products imported into the U.S. remain at the same level in 2009, one could expect the increased assessment to generate approximately $10.8 million.

Importers with line-items appearing on U.S. Customs and Border Protection documentation with value of the cotton contained therein results of an assessment of two dollars ($2.00) or less will not be subject to assessments. In addition, imported cotton and products may be exempt from assessment if the cotton content of products is U.S. produced, cotton other than Upland, or

imported products that are eligible to be labeled as 100 percent organic under the National Organic Program (7 CFR part 205) and who is not a split operation.

There are no Federal rules that duplicate, overlap, or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35) the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0093. This rule does not result in a change to the information collection and recordkeeping requirements previously approved.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble 7 CFR Part 1205 is amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

■ 1. The authority citation for Part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118 and 7 U.S.C. 7401.

■ 2. In § 1205.510, paragraph (b)(2) and the table in paragraph (b)(3)(ii) are revised to read as follows:

§ 1205.510 Levy of assessments.

* * * * *

(b) * * *

(2) The 12-month average of monthly weighted average prices received by U.S. farmers will be calculated annually. Such weighted average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is $1.0880 cents per kilogram.

(3) * * *

(ii) * * *

IMPORT ASSESSMENT TABLE

[Raw cotton fiber]

HTS No.	Conv. fact.	Cents/pkg.
5201000500	0	1.0880
5201001200	0	1.0880
5201001400	0	1.0880
5201001800	0	1.0880
5201002200	0	1.0880
5201002400	0	1.0880
5201002800	0	1.0880
5201003400	0	1.0880
5201003800	0	1.0880
5204110000	1.1111	1.2089
5204200000	1.1111	1.2089
5205111000	1.1111	1.2089
5205112000	1.1111	1.2089
5205121000	1.1111	1.2089
5205122000	1.1111	1.2089
5205131000	1.1111	1.2089
5205132000	1.1111	1.2089
5205141000	1.1111	1.2089
5205210020	1.1111	1.2089
5205210090	1.1111	1.2089
5205220020	1.1111	1.2089
5205220090	1.1111	1.2089
5205230020	1.1111	1.2089
5205230090	1.1111	1.2089
5205240020	1.1111	1.2089
5205240090	1.1111	1.2089
5205310000	1.1111	1.2089
5205320000	1.1111	1.2089
5205330000	1.1111	1.2089
5205340000	1.1111	1.2089
5205410020	1.1111	1.2089
5205410090	1.1111	1.2089
5205420021	1.1111	1.2089
5205420090	1.1111	1.2089
5205440021	1.1111	1.2089
5205440090	1.1111	1.2089
5206120000	0.5556	0.6045
5206130000	0.5556	0.6045
5206140000	0.5556	0.6045
5206220000	0.5556	0.6045
5206230000	0.5556	0.6045
5206240000	0.5556	0.6045
5206310000	0.5556	0.6045
5207100000	1.1111	1.2089
5207900000	0.5556	0.6045
5208112020	1.1455	1.2463
5208112040	1.1455	1.2463
5208112090	1.1455	1.2463
5208114020	1.1455	1.2463
5208114060	1.1455	1.2463
5208114090	1.1455	1.2463
5208118090	1.1455	1.2463
5208124020	1.1455	1.2463
5208124040	1.1455	1.2463
5208124090	1.1455	1.2463
5208126020	1.1455	1.2463
5208126040	1.1455	1.2463
5208126060	1.1455	1.2463
5208126090	1.1455	1.2463
5208128020	1.1455	1.2463
5208128090	1.1455	1.2463
5208130000	1.1455	1.2463
5208192020	1.1455	1.2463
5208192090	1.1455	1.2463
5208194020	1.1455	1.2463
5208194090	1.1455	1.2463
5208196020	1.1455	1.2463
5208196090	1.1455	1.2463
5208224040	1.1455	1.2463
5208224090	1.1455	1.2463
5208226020	1.1455	1.2463
5208226060	1.1455	1.2463
5208228020	1.1455	1.2463
5208230000	1.1455	1.2463
5208292020	1.1455	1.2463
5208292090	1.1455	1.2463
5208294090	1.1455	1.2463
5208296090	1.1455	1.2463
5208298020	1.1455	1.2463
5208312000	1.1455	1.2463
5208321000	1.1455	1.2463
5208323020	1.1455	1.2463
5208323040	1.1455	1.2463
5208323090	1.1455	1.2463
5208324020	1.1455	1.2463
5208324040	1.1455	1.2463
5208325020	1.1455	1.2463
5208330000	1.1455	1.2463
5208392020	1.1455	1.2463
5208392090	1.1455	1.2463
5208394090	1.1455	1.2463
5208396090	1.1455	1.2463
5208398020	1.1455	1.2463
5208412000	1.1455	1.2463
5208416000	1.1455	1.2463
5208418000	1.1455	1.2463
5208421000	1.1455	1.2463
5208423000	1.1455	1.2463
5208424000	1.1455	1.2463
5208425000	1.1455	1.2463
5208430000	1.1455	1.2463
5208492000	1.1455	1.2463
5208494020	1.1455	1.2463
5208494090	1.1455	1.2463
5208496010	1.1455	1.2463
5208496090	1.1455	1.2463
5208498090	1.1455	1.2463
5208512000	1.1455	1.2463
5208516060	1.1455	1.2463
5208518090	1.1455	1.2463
5208523020	1.1455	1.2463
5208523045	1.1455	1.2463
5208523090	1.1455	1.2463
5208524020	1.1455	1.2463
5208524045	1.1455	1.2463
5208524065	1.1455	1.2463
5208525020	1.1455	1.2463
5208591000	1.1455	1.2463
5208592025	1.1455	1.2463
5208592095	1.1455	1.2463
5208594090	1.1455	1.2463
5208596090	1.1455	1.2463
5209110020	1.1455	1.2463
5209110035	1.1455	1.2463
5209110090	1.1455	1.2463
5209120020	1.1455	1.2463
5209120040	1.1455	1.2463
5209190020	1.1455	1.2463
5209190040	1.1455	1.2463
5209190060	1.1455	1.2463
5209190090	1.1455	1.2463
5209210090	1.1455	1.2463
5209220020	1.1455	1.2463
5209220040	1.1455	1.2463
5209290040	1.1455	1.2463
5209290090	1.1455	1.2463
5209313000	1.1455	1.2463
5209316020	1.1455	1.2463
5209316035	1.1455	1.2463
5209316050	1.1455	1.2463
5209316090	1.1455	1.2463
5209320020	1.1455	1.2463
5209320040	1.1455	1.2463

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

IMPORT ASSESSMENT TABLE—Continued
[Raw cotton fiber]

HTS No.	Conv. fact.	Cents/pkg.
5209390020	1.1455	1.2463
5209390040	1.1455	1.2463
5209390060	1.1455	1.2463
5209390080	1.1455	1.2463
5209390090	1.1455	1.2463
5209413000	1.1455	1.2463
5209416020	1.1455	1.2463
5209416040	1.1455	1.2463
5209420020	1.0309	1.1216
5209420040	1.0309	1.1216
5209430030	1.1455	1.2463
5209430050	1.1455	1.2463
5209490020	1.1455	1.2463
5209490090	1.1455	1.2463
5209516035	1.1455	1.2463
5209516050	1.1455	1.2463
5209520020	1.1455	1.2463
5209590025	1.1455	1.2463
5209590040	1.1455	1.2463
5209590090	1.1455	1.2463
5210114020	0.6873	0.7478
5210114040	0.6873	0.7478
5210116020	0.6873	0.7478
5210116040	0.6873	0.7478
5210116060	0.6873	0.7478
5210118020	0.6873	0.7478
5210191000	0.6873	0.7478
5210192090	0.6873	0.7478
5210214040	0.6873	0.7478
5210216020	0.6873	0.7478
5210216060	0.6873	0.7478
5210218020	0.6873	0.7478
5210314020	0.6873	0.7478
5210314040	0.6873	0.7478
5210316020	0.6873	0.7478
5210318020	0.6873	0.7478
5210414000	0.6873	0.7478
5210416000	0.6873	0.7478
5210418000	0.6873	0.7478
5210498090	0.6873	0.7478
5210514040	0.6873	0.7478
5210516020	0.6873	0.7478
5210516040	0.6873	0.7478
5210516060	0.6873	0.7478
5211110090	0.6873	0.7478
5211120020	0.6873	0.7478
5211190020	0.6873	0.7478
5211190060	0.6873	0.7478
5211202125	0.6873	0.7478
5211202135	0.4165	0.4532
5211202150	0.6873	0.7478
5211202990	0.6873	0.7478
5211320020	0.6873	0.7478
5211390040	0.6873	0.7478
5211390060	0.6873	0.7478
5211490020	0.6873	0.7478
5211490090	0.6873	0.7478
5211590025	0.6873	0.7478
5212146090	0.9164	0.9970
5212156020	0.9164	0.9970
5212216090	0.9164	0.9970
5509530030	0.5556	0.6045
5509530060	0.5556	0.6045
5513110020	0.4009	0.4362
5513110040	0.4009	0.4362
5513110060	0.4009	0.4362
5513110090	0.4009	0.4362
5513120000	0.4009	0.4362
5513130020	0.4009	0.4362

IMPORT ASSESSMENT TABLE—Continued
[Raw cotton fiber]

HTS No.	Conv. fact.	Cents/pkg.
5513210020	0.4009	0.4362
5513310000	0.4009	0.4362
5514120020	0.4009	0.4362
5516420060	0.4009	0.4362
5516910060	0.4009	0.4362
5516930090	0.4009	0.4362
5601210010	1.1455	1.2463
5601210090	1.1455	1.2463
5601300000	1.1455	1.2463
5602109090	0.5727	0.6231
5602290000	1.1455	1.2463
5602906000	0.526	0.5723
5604909000	0.5556	0.6045
5607909000	0.8889	0.9671
5608901000	1.1111	1.2089
5608902300	1.1111	1.2089
5609001000	1.1111	1.2089
5609004000	0.5556	0.6045
5701104000	0.0556	0.0605
5701109000	0.1111	0.1209
5701901010	1.0444	1.1363
5702109020	1.1	1.1968
5702312000	0.0778	0.0846
5702411000	0.0722	0.0786
5702412000	0.0778	0.0846
5702421000	0.0778	0.0846
5702913000	0.0889	0.0967
5702990500	1.1111	1.2089
5702991500	1.1111	1.2089
5703900000	0.4489	0.4884
5801210000	1.1455	1.2463
5801230000	1.1455	1.2463
5801250010	1.1455	1.2463
5801250020	1.1455	1.2463
5801260020	1.1455	1.2463
5802190000	1.1455	1.2463
5802300030	0.5727	0.6231
5804291000	1.1455	1.2463
5806200010	0.3534	0.3845
5806200090	0.3534	0.3845
5806310000	1.1455	1.2463
5806400000	0.4296	0.4674
5808107000	0.5727	0.6231
5808900010	0.5727	0.6231
5811002000	1.1455	1.2463
6001106000	1.1455	1.2463
6001210000	0.8591	0.9347
6001220000	0.2864	0.3116
6001910010	0.8591	0.9347
6001910020	0.8591	0.9347
6001920020	0.2864	0.3116
6001920030	0.2864	0.3116
6001920040	0.2864	0.3116
6003203000	0.8681	0.9445
6003306000	0.2894	0.3149
6003406000	0.2894	0.3149
6005210000	0.8681	0.9445
6005220000	0.8681	0.9445
6005230000	0.8681	0.9445
6005240000	0.8681	0.9445
6005310010	0.2894	0.3149
6005310080	0.2894	0.3149
6005320010	0.2894	0.3149
6005320080	0.2894	0.3149
6005330010	0.2894	0.3149
6005330080	0.2894	0.3149
6005340010	0.2894	0.3149
6005340080	0.2894	0.3149
6005410010	0.2894	0.3149

IMPORT ASSESSMENT TABLE—Continued
[Raw cotton fiber]

HTS No.	Conv. fact.	Cents/pkg.
6005410080	0.2894	0.3149
6005420010	0.2894	0.3149
6005420080	0.2894	0.3149
6005430010	0.2894	0.3149
6005430080	0.2894	0.3149
6005440010	0.2894	0.3149
6005440080	0.2894	0.3149
6006211000	1.1574	1.2593
6006221000	1.1574	1.2593
6006231000	1.1574	1.2593
6006241000	1.1574	1.2593
6006310040	0.1157	0.1259
6006310080	0.1157	0.1259
6006320040	0.1157	0.1259
6006320080	0.1157	0.1259
6006330040	0.1157	0.1259
6006330080	0.1157	0.1259
6006340040	0.1157	0.1259
6006340080	0.1157	0.1259
6006410085	0.1157	0.1259
6006420085	0.1157	0.1259
6006430085	0.1157	0.1259
6006440085	0.1157	0.1259
6101200010	1.0094	1.0982
6101200020	1.0094	1.0982
6102200010	1.0094	1.0982
6102200020	1.0094	1.0982
6103421020	0.8806	0.9581
6103421040	0.8806	0.9581
6103421050	0.8806	0.9581
6103421070	0.8806	0.9581
6103431520	0.2516	0.2737
6103431540	0.2516	0.2737
6103431550	0.2516	0.2737
6103431570	0.2516	0.2737
6104220040	0.9002	0.9794
6104220060	0.9002	0.9794
6104320000	0.9207	1.0017
6104420010	0.9002	0.9794
6104420020	0.9002	0.9794
6104520010	0.9312	1.0131
6104520020	0.9312	1.0131
6104622006	0.8806	0.9581
6104622011	0.8806	0.9581
6104622016	0.8806	0.9581
6104622021	0.8806	0.9581
6104622026	0.8806	0.9581
6104622028	0.8806	0.9581
6104622030	0.8806	0.9581
6104622060	0.8806	0.9581
6104632006	0.3774	0.4106
6104632011	0.3774	0.4106
6104632026	0.3774	0.4106
6104632028	0.3774	0.4106
6104632030	0.3774	0.4106
6104632060	0.3774	0.4106
6104692030	0.3858	0.4198
6105100010	0.985	1.0717
6105100020	0.985	1.0717
6105100030	0.985	1.0717
6105202010	0.3078	0.3349
6105202030	0.3078	0.3349
6106100010	0.985	1.0717
6106100020	0.985	1.0717
6106100030	0.985	1.0717
6106202010	0.3078	0.3349
6106202030	0.3078	0.3349
6107110010	1.1322	1.2318
6107110020	1.1322	1.2318

IMPORT ASSESSMENT TABLE—Continued
[Raw cotton fiber]

HTS No.	Conv. fact.	Cents/pkg.
6107120010	0.5032	0.5475
6107210010	0.8806	0.9581
6107220015	0.3774	0.4106
6107220025	0.3774	0.4106
6107910040	1.2581	1.3688
6108210010	1.2445	1.3540
6108210020	1.2445	1.3540
6108310010	1.1201	1.2187
6108310020	1.1201	1.2187
6108320010	0.2489	0.2708
6108320015	0.2489	0.2708
6108320025	0.2489	0.2708
6108910005	1.2445	1.3540
6108910015	1.2445	1.3540
6108910025	1.2445	1.3540
6108910030	1.2445	1.3540
6108920030	0.2489	0.2708
6109100004	0.9956	1.0832
6109100007	0.9956	1.0832
6109100011	0.9956	1.0832
6109100012	0.9956	1.0832
6109100014	0.9956	1.0832
6109100018	0.9956	1.0832
6109100023	0.9956	1.0832
6109100027	0.9956	1.0832
6109100037	0.9956	1.0832
6109100040	0.9956	1.0832
6109100045	0.9956	1.0832
6109100060	0.9956	1.0832
6109100065	0.9956	1.0832
6109100070	0.9956	1.0832
6109901007	0.3111	0.3385
6109901009	0.3111	0.3385
6109901049	0.3111	0.3385
6109901050	0.3111	0.3385
6109901060	0.3111	0.3385
6109901065	0.3111	0.3385
6109901090	0.3111	0.3385
6110202005	1.1837	1.2879
6110202010	1.1837	1.2879
6110202015	1.1837	1.2879
6110202020	1.1837	1.2879
6110202025	1.1837	1.2879
6110202030	1.1837	1.2879
6110202035	1.1837	1.2879
6110202040	1.1574	1.2593
6110202045	1.1574	1.2593
6110202067	1.1574	1.2593
6110202069	1.1574	1.2593
6110202077	1.1574	1.2593
6110202079	1.1574	1.2593
6110909022	0.263	0.2861
6110909024	0.263	0.2861
6110909030	0.3946	0.4293
6110909040	0.263	0.2861
6110909042	0.263	0.2861
6111201000	1.2581	1.3688
6111202000	1.2581	1.3688
6111203000	1.0064	1.0950
6111205000	1.0064	1.0950
6111206010	1.0064	1.0950
6111206020	1.0064	1.0950
6111206030	1.0064	1.0950
6111206050	1.0064	1.0950
6111206070	1.0064	1.0950
6111305020	0.2516	0.2737
6111305050	0.2516	0.2737
6111305070	0.2516	0.2737
6112110050	0.7548	0.8212
6112120010	0.2516	0.2737
6112120030	0.2516	0.2737
6112120040	0.2516	0.2737
6112120050	0.2516	0.2737
6112120060	0.2516	0.2737
6112390010	1.1322	1.2318
6112490010	0.9435	1.0265
6114200005	0.9002	0.9794
6114200010	0.9002	0.9794
6114200015	0.9002	0.9794
6114200020	1.286	1.3992
6114200040	0.9002	0.9794
6114200046	0.9002	0.9794
6114200052	0.9002	0.9794
6114200060	0.9002	0.9794
6114301010	0.2572	0.2798
6114301020	0.2572	0.2798
6114303030	0.2572	0.2798
6115101510	1.0417	1.1334
6115103000	1.0417	1.1334
6115298010	1.0417	1.1334
6115959000	1.0417	1.1334
6115966020	0.2315	0.2519
6116101300	0.3655	0.3977
6116101720	0.8528	0.9278
6116926420	1.0965	1.1930
6116926430	1.2183	1.3255
6116926440	1.0965	1.1930
6116928800	1.0965	1.1930
6117809510	0.9747	1.0605
6117809540	0.3655	0.3977
6201121000	0.948	1.0314
6201122010	0.8953	0.9741
6201122050	0.6847	0.7450
6201122060	0.6847	0.7450
6201134030	0.2633	0.2865
6201921000	0.9267	1.0082
6201921500	1.1583	1.2602
6201922010	1.0296	1.1202
6201922021	1.2871	1.4004
6201922031	1.2871	1.4004
6201922041	1.2871	1.4004
6201922051	1.0296	1.1202
6201922061	1.0296	1.1202
6201931000	0.3089	0.3361
6201933511	0.2574	0.2801
6201933521	0.2574	0.2801
6201999060	0.2574	0.2801
6202121000	0.9372	1.0197
6202122010	1.1064	1.2038
6202122025	1.3017	1.4162
6202122050	0.8461	0.9206
6202122060	0.8461	0.9206
6202134005	0.2664	0.2898
6202134020	0.333	0.3623
6202921000	1.0413	1.1329
6202921500	1.0413	1.1329
6202922026	1.3017	1.4162
6202922061	1.0413	1.1329
6202922071	1.0413	1.1329
6202931000	0.3124	0.3399
6202935011	0.2603	0.2832
6202935021	0.2603	0.2832
6203122010	0.1302	0.1417
6203221000	1.3017	1.4162
6203322010	1.2366	1.3454
6203322040	1.2366	1.3454
6203332010	0.1302	0.1417
6203392010	1.1715	1.2746
6203399060	0.2603	0.2832
6203422010	0.9961	1.0838
6203422025	0.9961	1.0838
6203422050	0.9961	1.0838
6203422090	0.9961	1.0838
6203424006	1.2451	1.3547
6203424011	1.2451	1.3547
6203424016	0.9961	1.0838
6203424021	1.2451	1.3547
6203424026	1.2451	1.3547
6203424031	1.2451	1.3547
6203424036	1.2451	1.3547
6203424041	0.9961	1.0838
6203424046	0.9961	1.0838
6203424051	0.9238	1.0051
6203424056	0.9238	1.0051
6203424061	0.9238	1.0051
6203431500	0.1245	0.1355
6203434010	0.1232	0.1340
6203434020	0.1232	0.1340
6203434030	0.1232	0.1340
6203434040	0.1232	0.1340
6203498045	0.249	0.2709
6204132010	0.1302	0.1417
6204192000	0.1302	0.1417
6204198090	0.2603	0.2832
6204221000	1.3017	1.4162
6204223030	1.0413	1.1329
6204223040	1.0413	1.1329
6204223050	1.0413	1.1329
6204223060	1.0413	1.1329
6204223065	1.0413	1.1329
6204292040	0.3254	0.3540
6204322010	1.2366	1.3454
6204322030	1.0413	1.1329
6204322040	1.0413	1.1329
6204423010	1.2728	1.3848
6204423030	0.9546	1.0386
6204423040	0.9546	1.0386
6204423050	0.9546	1.0386
6204423060	0.9546	1.0386
6204522010	1.2654	1.3768
6204522030	1.2654	1.3768
6204522040	1.2654	1.3768
6204522070	1.0656	1.1594
6204522080	1.0656	1.1594
6204533010	0.2664	0.2898
6204594060	0.2664	0.2898
6204622010	0.9961	1.0838
6204622025	0.9961	1.0838
6204622050	0.9961	1.0838
6204624006	1.2451	1.3547
6204624011	1.2451	1.3547
6204624021	0.9961	1.0838
6204624026	1.2451	1.3547
6204624031	1.2451	1.3547
6204624036	1.2451	1.3547
6204624041	1.2451	1.3547
6204624046	0.9961	1.0838
6204624051	0.9961	1.0838
6204624056	0.9854	1.0721
6204624061	0.9854	1.0721
6204624066	0.9854	1.0721
6204633510	0.2546	0.2770
6204633530	0.2546	0.2770
6204633532	0.2437	0.2651
6204633540	0.2437	0.2651
6204692510	0.249	0.2709
6204692540	0.2437	0.2651

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. fact.	Cents/pkg.
6204699044	0.249	0.2709
6204699046	0.249	0.2709
6204699050	0.249	0.2709
6205202016	0.9961	1.0838
6205202021	0.9961	1.0838
6205202026	0.9961	1.0838
6205202031	0.9961	1.0838
6205202036	1.1206	1.2192
6205202047	0.9961	1.0838
6205202051	0.9961	1.0838
6205202061	0.9961	1.0838
6205202066	0.9961	1.0838
6205202071	0.9961	1.0838
6205202076	0.9961	1.0838
6205302010	0.3113	0.3387
6205302030	0.3113	0.3387
6205302040	0.3113	0.3387
6205302050	0.3113	0.3387
6205302080	0.3113	0.3387
6206100040	0.1245	0.1355
6206303011	0.9961	1.0838
6206303021	0.9961	1.0838
6206303031	0.9961	1.0838
6206303041	0.9961	1.0838
6206303051	0.9961	1.0838
6206303061	0.9961	1.0838
6206403010	0.3113	0.3387
6206403030	0.3113	0.3387
6206900040	0.249	0.2709
6207110000	1.0852	1.1807
6207199010	0.3617	0.3935
6207210030	1.1085	1.2060
6207220000	0.3695	0.4020
6207911000	1.1455	1.2463
6207913010	1.1455	1.2463
6207913020	1.1455	1.2463
6208210010	1.0583	1.1514
6208210020	1.0583	1.1514
6208220000	0.1245	0.1355
6208911010	1.1455	1.2463
6208911020	1.1455	1.2463
6208913010	1.1455	1.2463
6209201000	1.1577	1.2596
6209203000	0.9749	1.0607
6209205030	0.9749	1.0607
6209205035	0.9749	1.0607
6209205040	1.2186	1.3258
6209205045	0.9749	1.0607
6209205050	0.9749	1.0607
6209303020	0.2463	0.2680
6209303040	0.2463	0.2680
6210109010	0.2291	0.2493
6210403000	0.0391	0.0425
6210405020	0.4556	0.4957
6211111010	0.1273	0.1385
6211111020	0.1273	0.1385
6211118010	1.1455	1.2463
6211118020	1.1455	1.2463
6211320007	0.8461	0.9206
6211320010	1.0413	1.1329
6211320015	1.0413	1.1329
6211320030	0.9763	1.0622
6211320060	0.9763	1.0622
6211320070	0.9763	1.0622
6211330010	0.3254	0.3540
6211330030	0.3905	0.4249
6211330035	0.3905	0.4249
6211330040	0.3905	0.4249
6211420010	1.0413	1.1329

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. fact.	Cents/pkg.
6211420020	1.0413	1.1329
6211420025	1.1715	1.2746
6211420060	1.0413	1.1329
6211420070	1.1715	1.2746
6211430010	0.2603	0.2832
6211430030	0.2603	0.2832
6211430040	0.2603	0.2832
6211430050	0.2603	0.2832
6211430060	0.2603	0.2832
6211430066	0.2603	0.2832
6212105020	0.2412	0.2624
6212109010	0.9646	1.0495
6212109020	0.2412	0.2624
6212200020	0.3014	0.3279
6212900030	0.1929	0.2099
6213201000	1.1809	1.2848
6213202000	1.0628	1.1563
6213901000	0.4724	0.5140
6214900010	0.9043	0.9839
6216000800	0.2351	0.2558
6216001720	0.6752	0.7346
6216003800	1.2058	1.3119
6216004100	1.2058	1.3119
6217109510	1.0182	1.1078
6217109530	0.2546	0.2770
6301300010	0.8766	0.9537
6301300020	0.8766	0.9537
6302100005	1.1689	1.2718
6302100008	1.1689	1.2718
6302100015	1.1689	1.2718
6302215010	0.8182	0.8902
6302215020	0.8182	0.8902
6302217010	1.1689	1.2718
6302217020	1.1689	1.2718
6302217050	1.1689	1.2718
6302219010	0.8182	0.8902
6302219020	0.8182	0.8902
6302219050	0.8182	0.8902
6302222010	0.4091	0.4451
6302222020	0.4091	0.4451
6302313010	0.8182	0.8902
6302313050	1.1689	1.2718
6302315050	0.8182	0.8902
6302317010	1.1689	1.2718
6302317020	1.1689	1.2718
6302317040	1.1689	1.2718
6302317050	1.1689	1.2718
6302319010	0.8182	0.8902
6302319040	0.8182	0.8902
6302319050	0.8182	0.8902
6302322020	0.4091	0.4451
6302322040	0.4091	0.4451
6302402010	0.9935	1.0809
6302511000	0.5844	0.6358
6302512000	0.8766	0.9537
6302513000	0.5844	0.6358
6302514000	0.8182	0.8902
6302600010	1.1689	1.2718
6302600020	1.052	1.1446
6302600030	1.052	1.1446
6302910005	1.052	1.1446
6302910015	1.1689	1.2718
6302910025	1.052	1.1446
6302910035	1.052	1.1446
6302910045	1.052	1.1446
6302910050	1.052	1.1446
6302910060	1.052	1.1446
6303191100	0.9448	1.0279
6303910010	0.6429	0.6995

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. fact.	Cents/pkg.
6303910020	0.6429	0.6995
6304111000	1.0629	1.1564
6304190500	1.052	1.1446
6304191000	1.1689	1.2718
6304191500	0.4091	0.4451
6304192000	0.4091	0.4451
6304910020	0.9351	1.0174
6304920000	0.9351	1.0174
6505901540	0.181	0.1969
6505902060	0.9935	1.0809
6505902545	0.5844	0.6358

* * * * *

Dated: June 30, 2009.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. E9–16031 Filed 7–7–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1730

RIN 0572–AC07

Interconnection of Distributed Resources

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service, an agency delivering the U.S. Department of Agriculture's Rural Development Utilities Programs, hereinafter referred to as RUS, is amending its regulation to require electric program borrowers establish and maintain a written standard policy relating to the Interconnection of Distributed Resources (IDR). The intended effect is that owners of distributed resources know what they have to do to connect their facilities to the electric power systems of borrower electric cooperatives.

DATES: *Effective Date:* August 7, 2009. Incorporation by reference of a certain publication listed in this final rule is approved by the Director of the Federal Register as of August 7, 2009.

FOR FURTHER INFORMATION CONTACT: Donald Junta, USDA—Rural Development Utilities Programs, 1400 Independence Avenue, SW., Washington, DC 20250–1569, telephone (202) 720–3720 or e-mail to *Donald.Junta@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325; telephone (202) 512–1800 or at *http://www.cfda.gov.*

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' as implemented under USDA's regulations at 7 CFR part 3015.

Executive Order 13132, Federalism

The policies contained in this final rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, nor does this direct final rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with States is not required.

Information Collection and Recordkeeping Requirements

The information and collection and recordkeeping requirements contained in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) and have been assigned OMB Control Number 0572–0141.

National Environmental Policy Act Certification

The Agency has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 553(a)(2), this final rule is exempt from the rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), including the requirement to provide prior notice and an opportunity for public comment. Because this final rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable.

Unfunded Mandates

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and Tribal governments for the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this final rule meets the applicable standards in § 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted, no retroactive effect will be given to this rule, and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

Background

On August 13, 2008, at 73 FR 47101, the Agency published a rulemaking proposing to amend 7 CFR Part 1730 by adding a Subpart C titled ''Interconnection of Distributed Resources''. This rule will require that electric program borrowers shall be responsible for establishing and maintaining a written standard policy relating to the interconnection of distributed resources (IDR). This rule will allow owners of distributed resources to ascertain the requirements of borrower electric cooperatives regarding connection to the electric cooperative facilities by referring to written borrower standards for IDR.

Prospective owners of distributed resources often do not know what they must do to connect their facilities to the electric power system of a borrower electric cooperative. The purpose of this action is to allow the owners of distributed resources to know exactly what they must do to connect their facilities with the electric power systems of borrower electric cooperatives.

The United States electric power system (electric power system) consists of three distinct components: Generation facilities, transmission facilities (including bulk transmission and subtransmission facilities) and distribution facilities. Specific definitions of generation, transmission and distribution facilities are located at 7 CFR 1710.2.

RUS borrowers have a legal obligation to RUS to maintain their respective systems. In satisfying this legal obligation, a borrower furthers the purposes of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) while also preserving the value of its system to serve as collateral for repayment of RUS financial assistance. The scope of this legal obligation is frequently measured against prudent utility practices (PUP). Accordingly, RUS expects and this rule provides for borrowers to be aware of and follow developing IDR standards using PUP. Voluntary standards using PUP are emerging within the private sector and the requirements of this final rule are consistent with those voluntary standards.

This rule refers to a national series of standards published by the Institute of Electrical and Electronic Engineers (IEEE). It also allows individual borrowers to create their own additional technical requirements to meet local conditions that are consistent with PUP. The regulation applies to IDR having an installed capacity of not more than 10 megavolt amperes (MVA). This specific value was chosen to correspond with the national series of standards published by IEEE.

This regulation provides that borrowers may in their written interconnection policies require appropriate liability insurance for distributed resource facilities that are interconnected to borrowers' electric systems. It is expected that what is appropriate may vary depending on the type and size of the IDR asset. Current Federal regulations do not specify the amount of liability insurance required except when the distributed resource facility is owned by a RUS borrower, contractor, engineer, or architect.

Discussion of Comments and Changes

RUS received 2 letters and 3 comments electronically through the Federal eRulemaking Portal on this proposed rule by the comment deadline of October 14, 2008. Comments were received from the National Rural Electric Cooperative Association (NRECA) Transmission and Distribution Engineering Committee, System

Planning Subcommittee, Keyes & Fox, LLP, and three individuals.

NRECA proposed that the statement ''the Agency expects that borrower ownership of distributed resources will be uncommon'' be deleted from the background section. RUS accepted this proposed change and deleted the statement.

NRECA also proposed that ''Compliance with the State requirements is adequate to comply with the rule.'' RUS rejected this proposed change because the intent of this rule is to facilitate the development of an appropriate minimum threshold of disclosure and uniformity in our borrowers' approach to interconnection policies. We recognize that in some States the requirements may be less than what would otherwise be determined appropriate threshold requirements. To accept this proposed change would negate one of the primary expected benefits of this rulemaking.

NRECA also proposed that ''Borrowers may follow their State's requirements without seeking an individual waiver from the Administrator where the State requirements are inconsistent with the rule.'' The final rule provides that where a State standard is higher than what is provided in this regulation, the higher standard would apply; the benefit of strict uniformity is not so great as to justify unnecessary conflict with State regulation in the area of IDR. Where a given State standard is lower, it is the Agency's intent to facilitate the establishment of a uniform minimum threshold but case by case waiver authority is retained.

NRECA also proposed that in the definitions § 1730.62, the regulation should only apply to installations ''directly connected to distribution systems,'' instead of ''not directly connected to a bulk power transmission system.'' RUS rejected this proposed change because the definition used in the regulation is that used in the series of standards published by the Institute of Electrical and Electronics Engineers, Inc. (IEEE) titled ''1547, Series of Interconnection Standards''.

NRECA proposed that in § 1730.63(a)(2) the phrase ''and the process to determine the costs'' be added to the first sentence. RUS accepts this change because it allows for the fact that the exact cost of an interconnection may not be known initially; the process to determine the final cost will be explained to the applicant during the application stage.

NRECA proposed that in § 1730.63(a)(5) IDR policies be reconsidered and updated every five years instead of every three years. RUS accepted this proposed change to be consistent with the IEEE standard revision or reaffirmation schedule.

NRECA proposed that in § 1730.63(b)(2) that IEEE 1547.1 (Standard Conformance Test Procedures for Equipment Interconnecting Distributed Resources with Electric Power Systems) be added to the requirement. RUS rejected this proposed change because by specifying IEEE 1547.1 and not other IEEE 1547 standards, RUS would not be including these other IEEE 1547 standards in the requirement. It is not the Agency's intent to establish standards that conflict with IEEE 1547, or foster the development of borrower policies that are at odds with IEEE 1547.

NRECA proposed that the requirements in § 1730.63(b)(3) regarding disconnect facilities (lockable disconnect, visible open, and fusing) be deleted. RUS accepted the proposed change that the fusing requirement be deleted because IEEE 1547 does not mention fusing in its phrase ''readily accessible, lockable, visible-break isolation device.'' However RUS rejected the other parts of the proposed change regarding deleting the lockable disconnect and a visible open requirement. This standard is incorporated in IEEE 1547 and to not include these requirements could place service personnel at risk.

NRECA proposed that if the regulation did contain a requirement for a disconnect device, it should not apply to small inverter based installations meeting UL 1741 (Underwriters Laboratory Standard for Inverters, Converters, Controllers and Interconnection System Equipment for Use with Distributed Energy Resources). RUS rejected this proposed change. Were a disconnect not to be required service personnel would have to rely on a solid state device to remove the IDR facility from a deenergized line while working on the line and could be at risk should such devices fail. This is contrary to standard work rules requiring visible open disconnect devices and grounds before a line may be worked on as a deenergized line.

NRECA proposed to add the phrase ''as determined by the borrower'' to the liability insurance requirement in § 1730.63(c)(1). RUS rejected a change that gave unfettered discretion to the borrower, in favor of an amendment that subjects the borrower's discretion to an ''appropriate'' test. We recognize that the amount of liability insurance that is appropriate may vary by industry or region, or size and operating characteristics of the IDR.

NRECA proposed that we delete the § 1730.63(c)(4) requirement that ''the Responsible Party must demonstrate the financial and managerial capability to develop, construct and operate the distributed resources.'' RUS elected to modify this requirement. As originally proposed, the entire burden falls to the Responsible Party, but the capability can in some cases be contracted to a third party who is more appropriate to the task. The intent of the rule is to accomplish the end result that the facility be capably developed, constructed and operated. We fully expect that the appropriate party for this responsibility can vary depending on the size and ownership profile of the IDR, but do retain the fundamental requirement that the responsibility for these variables be addressed for each IDR facility that falls under this rule

Keyes & Fox, LLP proposed that the rule not require a Responsible Party to carry a minimum level of liability insurance. RUS rejected this proposed change as it was felt that appropriate levels of liability insurance are consistent with the intent of this rulemaking.

Keyes & Fox, LLP proposed that § 1730.63(b)(3) not require installation of an external disconnect switch. RUS rejected this proposed change because an external disconnect device is referred to in IEEE 1547 and to not have an external disconnect device could place service personnel at risk.

An individual proposed that the address of the IEEE Operations Center be substituted for the IEEE corporate address in § 1730.63(b)(2) for obtaining a copy of IEEE 1547. RUS accepted this proposed change as the IEEE Operations Center is the more appropriate address for where IEEE documents may be obtained.

An individual proposed that in § 1730.62, that the definition of 10 MVA be changed to 100 kW. RUS rejected this proposed change because 10 MVA is the quantity that is used in IEEE 1547 and it is our intent that this rule not conflict with this nationally recognized series of standards.

An individual proposed that in § 1730.62, that the definition of 10 MVA be changed to 10 kVA. RUS rejected this proposed change because 10 MVA is the quantity that is used in IEEE 1547 and it is our intent that this rule not conflict with this nationally recognized series of standards.

List of Subjects in 7 CFR Part 1730

Electric power; Incorporation by reference; Loan program—energy; Reporting and recordkeeping requirements; Rural areas.

■ For reasons set forth in the preamble, the Agency amends 7 CFR, Chapter XVII, part 1730 by adding subpart C as follows:

PART 1730—ELECTRIC SYSTEM OPERATIONS AND MAINTENANCE

■ 1. The authority citation for part 1730 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

■ 2. Add Subpart C to read as follows:

Subpart C—Interconnection of Distributed Resources

Sec.

Subpart C—Interconnection of Distributed Resources

§ 1730.60 General.

Each electric program distribution borrower (as defined in § 1710.2) is responsible for establishing and maintaining a written standard policy relating to the Interconnection of Distributed Resources (IDR) having an installed capacity of not more than 10 megavolt amperes (MVA) at the point of common coupling.

§ 1730.61 RUS policy.

The Distributed Resource facility must not cause significant degradation of the safety, power quality, or reliability on the borrower's electric power system or other electric power systems interconnected to the borrower's electric power system. The Agency encourages borrowers to consider model policy templates developed by knowledgeable and expert institutions, such as, but not limited to the National Association of Regulatory Utility Commissioners, the Federal Energy Regulatory Commission and the National Rural Electric Cooperative Association. The Agency encourages all related electric borrowers to cooperate in the development of a common Distributed Resource policy.

§ 1730.62 Definitions.

''Distributed Resources'' as used in this subpart means sources of electric power that are not directly connected to a bulk power transmission system, having an installed capacity of not more than 10 MVA, connected to the borrower's electric power system through a point of common coupling. Distributed resources include both generators and energy storage technologies.

''Responsible Party'' as used in this subpart means the owner, operator or any other person or entity that is accountable to the borrower under the borrower's interconnection policy for Distributed Resources.

§ 1730.63 IDR policy criteria.

(a) *General.* (1) The borrower's IDR policy and procedures shall be readily available to the public and include, but not limited to, a standard application, application process, application fees, and agreement.

(2) All costs to be recovered from the applicant regarding the application process or the actual interconnection and the process to determine the costs are to be clearly explained to the applicant and authorized by the applicant prior to the borrower incurring these costs. The borrower may require separate non-refundable deposits sufficient to insure serious intent by the applicant prior to proceeding either with the application or actual interconnection process.

(3) IDR policies must be approved by the borrower's Board of Directors.

(4) The borrower may establish a new rate classification for customers with Distributed Resources.

(5) IDR policies must provide for reconsideration and updates every five years or more frequently as circumstances warrant.

(b) *Technical requirements.* (1) IDR policies must be consistent with prudent electric utility practice.

(2) IDR policies must incorporate the Institute of Electrical and Electronic Engineers (IEEE): IEEE 1547™—Standard for Interconnecting Distributed Resources with Electric Power Systems, approved June 12, 2003, and IEEE 1547.1™—Standard Conformance Test Procedures for Equipment Interconnecting Distributed Resources with Electric Power Systems, approved June 9, 2005. Copies of the IEEE Standards 1547™ and 1547.1™ may be obtained from the IEEE Operations Center, 445 Hoes Lane, Piscataway, NJ 08854–4141, telephone 1–800–678–4333 or online at *http://www.standards.ieee.org.* Copies of the material are available for inspection during normal business hours at RUS, Room 1265, U.S. Department of Agriculture, Washington, DC 20250. Telephone (202) 720–3720, e-mail *Donald.Junta@wdc.usda.gov,* or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(3) IDR policies must provide for appropriate electric power system disconnect facilities, as determined by the borrower, which shall include a lockable disconnect and a visible open, that are readily accessible to and operable by authorized personnel at all times.

(4) IDR policies must provide for borrower access to the Distributed Resources facility during normal business hours and all emergency situations.

(c) *Responsible Party obligations.* IDR policies must provide for appropriate Responsible Parties to assume the following risks and responsibilities:

(1) A Responsible Party must agree to maintain appropriate liability insurance as outlined in the borrower's interconnection policy.

(2) A Responsible Party must be responsible for the Distributed Resources compliance with all national, State, local government requirements and electric utility standards for the safety of the public and personnel responsible for utility electric power system operations, maintenance and repair.

(3) A Responsible Party must be responsible for the safe and effective operation and maintenance of the facility.

(4) Only Responsible Parties may apply for interconnection and the Responsible Party must demonstrate that the facility will be capably developed, constructed and operated, maintained, and repaired.

§ 1730.64 Power purchase agreements.

Nothing in this subpart requires the borrower to enter into purchase power arrangements with the owner of the Distributed Resources.

§ 1730.65 Effective dates.

(a) All electric program borrowers with an approved electric program loan as of July 8, 2009 shall have an IDR policy board approved and in effect no later than July 8, 2011.

(b) All other electric program borrowers that have pending applications or submit an application to the Agency for financial assistance on or after July 8, 2009 shall provide a letter of certification executed by the General Manager that the borrower meets the requirements of this subpart before such loan may be approved.

§ 1730.66 Administrative waiver.

The Administrator may waive in all or part, for good cause, the requirements and procedures of this subpart.

§§ 1730.67–1730.99 [Reserved]

§ 1730.100 OMB Control Number.

The Information collection requirements in this part are approved by the Office of Management and Budget and assigned OMB control number 0572–0141.

Dated: June 25, 2009.

James R. Newby,

Acting Administrator, Rural Utilities Service.

[FR Doc. E9–15888 Filed 7–7–09; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 41

[Docket ID OCC–2009–0001]

RIN 1557–AD14

FEDERAL RESERVE SYSTEM

12 CFR Part 222

[Regulation V; Docket No. R–1203, R–1255]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 334

RIN 3064–AC83; 3064–AD00

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 571

[Docket ID OTS–2009–0012]

RIN 1550–AC30

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 717

RIN 3133–AC90 and RIN 3133–AD00

FEDERAL TRADE COMMISSION

16 CFR Parts 641, 680, 681, and 698

RIN 3084–AA94

Fair Credit Reporting Affiliate Marketing Regulations; Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003; Correction

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); National Credit Union Administration (NCUA); and Federal Trade Commission (Commission).

ACTION: Final rule; correction.

SUMMARY: The OCC, Board, FDIC, OTS, NCUA, and Commission published in the **Federal Register** on May 14, 2009 a technical correction to final rules to implement the affiliate marketing provisions and identity theft red flags and address discrepancy provisions of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). The correction included in this **Federal Register** document corrects an error in the DATES section which caused the effective date to an amendment to the Commission's rules to be incorrect. This correction does not affect the OCC's, Board's, FDIC's, OTS's, or NCUA's rules.

DATES: *Effective Date:* This correction is effective July 8, 2009.

FOR FURTHER INFORMATION CONTACT: OCC: Jon Mitchell, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Amy E. Burke, Senior Attorney, or Jelena McWilliams, Attorney, Division of Consumer and Community Affairs, (202) 452–3667 or (202) 452–2412; or Kara Handzlik, Attorney, Legal Division, (202) 452–3852, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. For users of a Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

FDIC: Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424; Jeffrey M. Kopchik, Senior Policy Analyst, (202) 898–3872, or Samuel Frumkin, Senior Policy Analyst, (202) 898–6602, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Suzanne McQueen, Consumer Regulations Analyst, Compliance and Consumer Protection Division, (202) 906–6459; April Breslaw, Director, Consumer Regulations, (202) 906–6989; or Richard Bennett, Senior Compliance Counsel, Regulations and Legislation Division, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

NCUA: Linda Dent, Attorney, or Regina Metz, Attorney, Office of General Counsel, 703–518–6540, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

Commission: Anthony Rodriguez (Affiliate Marketing Rule) or Cora Han (Identity Theft Red Flags Rules), Attorneys, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326–2252, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The OCC, Board, FDIC, OTS, NCUA, and Commission published a document in the **Federal Register** on May 14, 2009 (74 FR 22639). The document (OCC–2009–0001; FR–R–1203 and R–1255; FDIC 3064–AD00; OTS–2008–0024; NCUA RIN 3133–AC90 and RIN 3133–AD00; and FTC RIN 3084–AA94) made technical corrections to the final rules implementing the affiliate marketing provisions and identity theft red flags and address discrepancy provisions of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act). The document also provided effective dates for these corrections. This document corrects an error in the **DATES** section, where renumbered amendatory instructions caused the effective date to an amendment to the Commission's rules to be incorrect.

In the technical corrections amendment to the final rule, FR Doc. No. 2009–10009 published on May 14, 2009 (74 FR 22639), make the following correction: ''On page 22639, in the center column, in the **DATES** section, the number ''34'' in the fourth line is corrected to read ''35''.

By the Office of the Comptroller of the Currency.

Julie L. Williams,

First Senior Deputy Comptroller and Chief Counsel.

By order of the Secretary of the Board acting under delegated authority, July 1, 2009.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 22nd day of June 2009.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: June 17, 2009.

By the Office of Thrift Supervision,

Deborah Dakin,

Acting Chief Counsel.

By order of the National Credit Union Administration Board, June 18, 2009.

Mary F. Rupp,

Secretary of the Board.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E9–16030 Filed 7–7–09; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P; 7535–01–P; 3084–88–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0044; Directorate Identifier 2008–NM–132–AD; Amendment 39–15953; AD 2009–14–03]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

There have been several Stick Pusher Capstan Shaft failures causing the dormant loss or severe degradation of the stick pusher function. * * *

Dormant loss or severe degradation of the stick pusher function could result in reduced controllability of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective August 12, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 12, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bruce Valentine, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7328; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on February 23, 2009 (74 FR 8039). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

There have been several Stick Pusher Capstan Shaft failures causing the dormant loss or severe degradation of the stick pusher function. This directive is issued to revise the first flight of the day check [in the Airplane Flight Manual] of the stall protection system to detect a degradation of the stick pusher function. It also introduces a new periodic maintenance task [in the Airworthiness Limitations Section of the Instructions for Continuing Airworthiness] to check the structural integrity of the stick pusher capstan shaft.

Dormant loss or severe degradation of the stick pusher function could result in reduced controllability of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a Note within the AD.

Costs of Compliance

We estimate that this AD will affect 707 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $56,560, or $80 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://*

www.regulations.gov; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2009–14–03 Bombardier, Inc. (Formerly Canadair): Amendment 39–15953. Docket No. FAA–2009–0044; Directorate Identifier 2008–NM–132–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 12, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes listed in Table 1 of this AD, certificated in any category.

TABLE 1—APPLICABILITY

Bombardier model—	Serial Nos.—
CL–600–1A11 (CL–600) airplanes	1004 through 1085 inclusive.
CL–600–2A12 (CL–601) airplanes	3001 through 3066 inclusive.
CL–600–2B16 (CL–601–3A, CL–601–3R) airplanes	5001 through 5194 inclusive.
CL–600–2B16 (CL–604) airplanes	5301 thorough 5665 inclusive.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (g)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

There have been several Stick Pusher Capstan Shaft failures causing the dormant loss or severe degradation of the stick pusher function. This directive is issued to revise the first flight of the day check [in the Airplane Flight Manual] of the stall protection system to detect a degradation of the stick pusher function. It also introduces a new periodic maintenance task [in the Airworthiness Limitations Section of the Instructions for Continuing Airworthiness] to check the structural integrity of the stick pusher capstan shaft.

Dormant loss or severe degradation of the stick pusher function could result in reduced controllability of the airplane.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 30 days after the effective date of this AD: Revise the Normal Procedures section of the applicable airplane flight manual (AFM) by inserting a copy of the applicable TR listed in Table 2 of this AD. Thereafter, operate the airplanes per the procedures specified in the applicable TR, except as provided by paragraph (g)(1) of this AD. If the operator has an AFM that is not listed in Table 2 of this AD, within 30 days after the effective date of this AD, revise the AFM using a method approved by the FAA or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

TABLE 2—TEMPORARY REVISIONS TO THE AFM

For Bombardier model—	Use Canadair temporary prevision—	Dated—	To the normal procedures section of—
CL–600–1A11 (CL–600) airplanes	600/23	January 30, 2007	Canadair Challenger CL–600–1A11 AFM.
CL–600–1A11 (CL–600) airplanes	600–1/18	January 30, 2007	Canadair Challenger CL–600–1A11 AFM (Winglets).
CL–600–2A12 (CL–601) airplanes	601/15	January 30, 2007	Canadair Challenger CL–600–2A12 AFM, PSP 601–1B–1.
CL–600–2A12 (CL–601) airplanes	601/16	January 30, 2007	Canadair Challenger CL–600–2A12 AFM, PSP 601–1A–1.
CL–600–2A12 (CL–601) airplanes	601/20	January 30, 2007	Canadair Challenger CL–600–2A12 AFM, PSP 601–1B.
CL–600–2A12 (CL–601) airplanes	601/28	January 30, 2007	Canadair Challenger CL–600–2A12 AFM.
CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes.	601/27	January 30, 2007	Canadair Challenger CL–600–2B16 AFM, PSP 601A–1.
CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes.	601/28	January 30, 2007	Canadair Challenger CL–600–2B16 AFM, PSP 601A–1–1.
CL–600–2B16 (CL–604) airplanes	604/22	January 30, 2007	Canadair Challenger CL–604 AFM, PSP 604–1.

(2) When information identical to that in a TR specified in paragraph (f)(1) of this AD has been included in the general revisions of the applicable AFM, the general revisions may be inserted into the AFM, and the TR may be removed from that AFM.

(3) Within 30 days after the effective date of this AD: Revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness by incorporating the applicable task in the TR listed in Table 3 of this AD. For all tasks identified in the TRs, the initial compliance time starts from the later of the times specified in paragraph (f)(3)(i) and (f)(3)(ii) of this AD. Thereafter, except as provided by paragraph (g)(1) of this AD, no alternative maintenance task intervals may be used.

(i) Within the compliance time specified in the ''Check Interval'' or ''Task Interval,'' as applicable, after the effective date of this AD.

(ii) Within the compliance time specified in the ''Check Interval'' or ''Task Interval,'' as applicable, after the date of issuance of the original Canadian airworthiness certificate or the date of issuance of the original Canadian export certificate of airworthiness.

TABLE 3—TEMPORARY REVISIONS TO THE AIRWORTHINESS LIMITATIONS SECTION

For Bombardier model—	Use Canadair temporary revision—	Dated—	To the airworthiness limitations section of—
CL–600–1A11 (CL–600) airplanes	5–138	June 26, 2007	Canadair Challenger Time Limits/Maintenance Checks (TLMC), PSP 605, Chapter 5, Section 5–10–30.
CL–600–2A12 (CL–601) airplanes	5–226	June 26, 2007	Canadair Challenger TLMC, PSP 601–5, Chapter 5, Section 5–10–30.
CL–600–2B16 (CL–601–3A and CL–601–3R) airplanes.	5–239	June 26, 2007	Canadair Challenger TLMC, PSP 601A–5, Chapter 5, Section 5–10–30.
CL–600–2B16 (CL–604) airplanes	5–2–32	May 31, 2007	Canadair Challenger CL–604 TLMC, Chapter 5, Section 5–10–40.

(4) When the information in applicable TR listed in Table 3 of this AD has been included in the general revisions of the applicable chapter of the Airworthiness Limitations section, the TR may be removed from the Airworthiness Limitations section of the Instruction for Continued Airworthiness.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Bruce Valentine, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7328; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

(4) Special Flight Permits: Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2008–12, dated February 8, 2008, and the service information listed in Table 4 of this AD, for related information.

TABLE 4—ALL SERVICE INFORMATION

Canadair TR—	Dated—	To the—
5–138	June 26, 2007	Canadair Challenger TLMC, PSP 605, Chapter 5, Section 5–10–30.
5–226	June 26, 2007	Canadair Challenger TLMC, PSP 601–5, Chapter 5, Section 5–10–30.
5–239	June 26, 2007	Canadair Challenger TLMC, PSP 601A–5, Chapter 5, Section 5–10–30.
5–2–32	May 31, 2007	Canadair Challenger CL–604 TLMC, Chapter 5, Section 5–10–40.
600/23	January 30, 2007	Canadair Challenger CL–600–1A11 AFM.
600–1/18	January 30, 2007	Canadair Challenger CL–600–1A11 AFM (Winglets).
601/15	January 30, 2007	Canadair Challenger CL–600–2A12 AFM, PSP 601–1B–1.
601/16	January 30, 2007	Canadair Challenger CL–600–2A12 AFM, PSP 601–1A–1.
601/20	January 30, 2007	Canadair Challenger CL–600–2A12 AFM, PSP 601–1B.
601/27	January 30, 2007	Canadair Challenger CL–600–2B16 AFM, PSP 601A–1.
601/28	January 30, 2007	Canadair Challenger CL–600–2A12 AFM.
601/28	January 30, 2007	Canadair Challenger CL–600–2B16 AFM, PSP 601A–1–1.
604/22	January 30, 2007	Canadair Challenger CL–604 AFM, PSP 604–1.

Material Incorporated by Reference

(i) You must use the service information contained in Table 5 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com*.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and

Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 5—MATERIAL INCORPORATED BY REFERENCE

Canadair temporary revision—	Dated—	To the—
5–138	June 26, 2007	Canadair Challenger Time Limits/Maintenance Checks, PSP 605, Chapter 5, Section 5–10–30.
5–226	June 26, 2007	Canadair Challenger Time Limits/Maintenance Checks, PSP 601–5, Chapter 5, Section 5–10–30.
5–239	June 26, 2007	Canadair Challenger Time Limits/Maintenance Checks, PSP 601A–5, Chapter 5, Section 5–10–30.
5–2–32	May 31, 2007	Canadair Challenger CL–604 Time Limits/Maintenance Checks, Chapter 5, Section 5–10–40.
600/23	January 30, 2007	Canadair Challenger CL–600–1A11 Airplane Flight Manual.
600–1/18	January 30, 2007	Canadair Challenger CL–600–1A11 Airplane Flight Manual (Winglets).
601/15	January 30, 2007	Canadair Challenger CL–600–2A12 Airplane Flight Manual, PSP 601–1B–1.
601/16	January 30, 2007	Canadair Challenger CL–600–2A12 Airplane Flight Manual, PSP 601–1A–1.
601/20	January 30, 2007	Canadair Challenger CL–600–2A12 Airplane Flight Manual, PSP 601–1B.
601/27	January 30, 2007	Canadair Challenger CL–600–2B16 AFM Airplane Flight Manual PSP 601A–1.
601/28	January 30, 2007	Canadair Challenger CL–600–2A12 Airplane Flight Manual.
601/28	January 30, 2007	Canadair Challenger CL–600–2B16 Airplane Flight Manual, PSP 601A–1–1.
604/22	January 30, 2007	Canadair Challenger CL–604 Airplane Flight Manual, PSP 604–1.

Issued in Renton, WA, on June 11, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–15394 Filed 7–7–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0933; Directorate Identifier 2007–NM–261–AD; Amendment 39–15956; AD 2009–14–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all Boeing Model 777 airplanes. That AD currently requires, for the drive mechanism of the horizontal stabilizer, repetitive detailed inspections for discrepancies, repetitive lubrication of the ballnut and ballscrew, repetitive measurements of the freeplay between the ballnut and the ballscrew, and corrective action if necessary. This new AD revises the compliance times of the existing AD. This AD results from a report of extensive corrosion of a ballscrew in the drive mechanism of the horizontal stabilizer on a Boeing Model 757 airplane, which is similar in design to the ballscrew on Model 777 airplanes. We are issuing this AD to prevent an undetected failure of the primary load path for the ballscrew in the drive mechanism of the horizontal stabilizer and subsequent wear and failure of the secondary load path, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

DATES: This AD becomes effective August 12, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 12, 2009.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6490; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2007–17–12, amendment 39–15170 (72 FR 49158, August 28, 2007). The existing AD applies to all Boeing Model 777 airplanes. That NPRM was published in the **Federal Register** on August 29, 2008 (73 FR 50896). That NPRM proposed to retain the actions specified in the existing AD (i.e., for the drive mechanism of the horizontal stabilizer, repetitive detailed inspections for discrepancies, repetitive lubrication of the ballnut and ballscrew, repetitive measurements of the freeplay between the ballnut and the ballscrew, and corrective action if necessary) but with new initial inspection compliance times.

New Service Information

Since issuance of the NPRM, we have reviewed Boeing Service Bulletin 777–27A0059, Revision 2, dated January 15, 2009. This revision of the service bulletin is essentially the same as Revision 1 of the service bulletin. (We referred to Boeing Alert Service Bulletin 777–27A0059, Revision 1, August 18, 2005, as the appropriate source of service information for doing the actions proposed in the NPRM.) Revision 2 of the service bulletin specifies similar

compliance times as those proposed in the NPRM, adds clarifying language regarding tooling, refers to the superseded AD, and defines the phrase ''known serviceable condition'' for a horizontal stabilizer trim actuator (HSTA), including defining the term ''overhaul.''

Explanation of Removed Service Bulletin Reference Paragraph and Note 1

We have removed the ''Service Bulletin Reference'' paragraph (i.e., paragraph (f) of the NPRM) and Note 1 from this AD and included references to Boeing Service Bulletin 777–27A0059, Revision 2, dated January 15, 2009, in paragraphs (g), (h), (i), and (l) of this AD. We have added Boeing Alert Service Bulletin 777–27A0059, Revision 1, dated August 18, 2005, to paragraph (j) of this AD to give credit for actions done before the effective date of this AD in accordance with Revision 1 of the service bulletin.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been received on the NPRM.

Requests for Clarification of ''Overhaul'' and ''Serviceable''

The Air Transport Association, on behalf of one of its members, American Airlines, requests that we clarify the meaning of ''overhaul'' and ''serviceable'' in both the NPRM and Boeing Alert Service Bulletin 777–27A0059, Revision 1, August 18, 2005.

American Airlines states that the NPRM specifies to replace an HSTA with a new or ''serviceable'' unit in accordance with Boeing Alert Service Bulletin 777–27A0059, Revision 1, dated August 18, 2005, and that the NPRM also states that no person shall install, on any airplane, an HSTA that is not new or ''overhauled,'' unless a detailed inspection, freeplay measurement, and lubrication of that actuator have been performed in accordance with paragraphs (h), (i), and (j) of the proposed AD (i.e., paragraphs (g), (h), and (i) of this final rule). In addition, American Airlines states that the component maintenance manual (CMM) for the subject HSTA does not have a defined ''overhaul'' work scope. American Airlines believes that the NPRM and the service bulletin should provide the specific procedures and/or CMM requirements for what constitutes an ''overhauled'' and/or ''serviceable'' HSTA.

We agree with the commenters. Note 6 of paragraph 3.A. of Boeing Service Bulletin 777–27A0059, Revision 2, dated January 15, 2009, now defines the phrase ''known serviceable condition'' for an HSTA, including defining the term ''overhaul.'' We have added the phrase ''known serviceable condition'' to paragraphs (f)(2) through (f)(4), (g), and (h) of this AD in place of the words ''serviceable HSTA'' and ''new or overhauled'' in the NPRM to be in line with the usage in that service bulletin. We have also changed paragraph (l) of this AD to refer to the definition of ''known serviceable condition'' in that service bulletin. In addition, new Note 1 referring to ''known serviceable condition'' has been added to the final rule.

Conclusion

We have carefully reviewed the available data, including the comments that have been received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 596 airplanes of the affected design in the worldwide fleet. This AD affects about 203 airplanes of U.S. registry. The new requirements of this AD add no additional economic burden. The current costs of the existing AD are repeated for the convenience of affected operators, as follows.

The maintenance records check takes about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the maintenance records check for U.S. operators is $16,240, or $80 per airplane.

The detailed inspection takes about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the inspection for U.S. operators is $16,240, or $80 per airplane, per inspection cycle.

The freeplay measurement takes about 5 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the freeplay measurement for U.S. operators is $81,200, or $400 per airplane, per measurement cycle.

The required lubrication takes about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the lubrication for U.S. operators is $16,240, or $80 per airplane, per lubrication cycle.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–15170 (72 FR 49158, August 28, 2007) and by adding the following new airworthiness directive (AD):

2009–14–06 Boeing: Amendment 39–15956. Docket No. FAA–2008–0933; Directorate Identifier 2007–NM–261–AD.

Effective Date

(a) This AD becomes effective August 12, 2009.

Affected ADs

(b) This AD supersedes AD 2007–17–12.

Applicability

(c) This AD applies to all Boeing Model 777 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of extensive corrosion of a ballscrew in the drive mechanism of the horizontal stabilizer on a Boeing Model 757 airplane, which is similar in design to the ballscrew on Model 777 airplanes. We are issuing this AD to prevent an undetected failure of the primary load path for the ballscrew in the drive mechanism of the horizontal stabilizer and subsequent wear and failure of the secondary load path, which could lead to loss of control of the horizontal stabilizer and consequent loss of control of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2007–17–12 With Revised Compliance Times and Updated Service Information

Maintenance Records Check

(f) For airplanes that have received an original airworthiness certificate or original export certificate of airworthiness prior to the effective date of this AD: Within 180 days or 3,500 flight hours after the effective date of this AD, whichever occurs first, perform a maintenance records check or inspect to determine the status of the horizontal stabilizer trim actuator (HSTA) as specified in paragraph (f)(1), (f)(2), (f)(3), or (f)(4) of this AD, as applicable:

(1) The original HSTA delivered with the airplane has not been removed and is still installed on the airplane;

(2) The original HSTA has been replaced with an HSTA in a known serviceable condition;

(3) The original HSTA has been replaced with an HSTA that is not in a known serviceable condition, and which has not received a detailed inspection and freeplay measurement as described in paragraphs (g) and (h) of this AD since that replacement; or

(4) The original HSTA has been replaced with an HSTA that is not in a known serviceable condition, and which has received a detailed inspection and freeplay measurement as described in paragraphs (g) and (h) of this AD since that replacement.

Note 1: The phrase ''known serviceable condition'' is defined in section 3.A., Note 6, of Boeing Service Bulletin 777–27A0059, Revision 2, dated January 15, 2009.

Detailed Inspection

(g) Within the compliance times specified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD, as applicable: Perform a detailed inspection for discrepancies of the horizontal stabilizer trim actuator ballnut and ballscrew, in accordance with Part 1 of the Accomplishment Instructions of Boeing Service Bulletin 777–27A0059, Revision 2, dated January 15, 2009. Repeat the detailed inspection thereafter at intervals not to exceed 3,500 flight hours or 12 months, whichever occurs first. If any discrepancy is found during any inspection required by this AD, before further flight, replace the actuator with an actuator in a known serviceable condition, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–27A0059, Revision 2, dated January 15, 2009.

(1) For airplanes identified in paragraph (f)(1) of this AD: Before the accumulation of 15,000 total flight hours, or within 18 months after the effective date of this AD, whichever occurs later.

(2) For airplanes identified in paragraph (f)(2) or (f)(4) of this AD: Before the accumulation of 15,000 flight hours since the replacement of the HSTA, or within 18 months after the effective date of this AD, whichever occurs later.

(3) For airplanes identified in paragraph (f)(3) of this AD: Before the accumulation of 3,500 flight hours since the replacement of the HSTA, or within 12 months after the effective date of this AD, whichever occurs later.

(4) For airplanes that have received an original airworthiness certificate or original export certificate of airworthiness on or after the effective date of this AD: Before the accumulation of 15,000 total flight hours, or within 18 months after the issuance of the original airworthiness certificate or original export certificate of airworthiness, whichever occurs later.

Freeplay Measurement (Inspection)

(h) Within the compliance times specified in paragraphs (h)(1), (h)(2), (h)(3), and (h)(4) of this AD, as applicable: Perform a freeplay measurement of the ballnut and ballscrew in accordance with Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 777–27A0059, Revision 2, dated January 15, 2009. Repeat the freeplay measurement thereafter at intervals not to exceed 18,000 flight hours or 60 months, whichever occurs first. If the freeplay is found to exceed the limits specified in the service bulletin during any measurement required by this AD, before further flight, replace the actuator with an actuator in a known serviceable condition, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–27A0059, Revision 2, dated January 15, 2009.

(1) For airplanes identified in paragraph (f)(1) of this AD: Before the accumulation of 15,000 total flight hours, or within 18 months after the effective date of this AD, whichever occurs later.

(2) For airplanes identified in paragraph (f)(2) or (f)(4) of this AD: Before the accumulation of 15,000 flight hours since the replacement of the HSTA, or within 18 months after the effective date of this AD, whichever occurs later.

(3) For airplanes identified in paragraph (f)(3) of this AD: Before the accumulation of 3,500 flight hours since the replacement of the HSTA, or within 12 months after the effective date of this AD, whichever occurs later.

(4) For airplanes that have received an original airworthiness certificate or original export certificate of airworthiness on or after the effective date of this AD: Before the accumulation of 15,000 total flight hours, or within 18 months after the issuance of the original airworthiness certificate or original export certificate of airworthiness, whichever occurs later.

Lubrication

(i) Within the compliance times specified in paragraphs (i)(1), (i)(2), (i)(3), and (i)(4) of this AD, as applicable: Lubricate the ballnut and ballscrew in accordance with Part 3 of the Accomplishment Instructions of Boeing Service Bulletin 777–27A0059, Revision 2, dated January 15, 2009. Repeat the lubrication thereafter at intervals not to exceed 2,000 flight hours or 12 months, whichever occurs first.

(1) For airplanes identified in paragraph (f)(1) of this AD: Before the accumulation of 15,000 total flight hours, or within 18 months after the effective date of this AD, whichever occurs later.

(2) For airplanes identified in paragraph (f)(2) or (f)(4) of this AD: Before the accumulation of 15,000 flight hours since the replacement of the HSTA, or within 18 months after the effective date of this AD, whichever occurs later.

(3) For airplanes identified in paragraph (f)(3) of this AD: Before the accumulation of 3,500 flight hours since the replacement of the HSTA, or within 12 months after the effective date of this AD, whichever occurs later.

(4) For airplanes that have received an original airworthiness certificate or original export certificate of airworthiness on or after the effective date of this AD: Before the accumulation of 15,000 total flight hours, or within 18 months after the issuance of the original airworthiness certificate or original export certificate of airworthiness, whichever occurs later.

Credit for Actions Accomplished According to Earlier Issues of the Service Bulletin

(j) Actions performed prior to the effective date of this AD, in accordance with Boeing Alert Service Bulletin 777–27A0059, dated September 18, 2003; or Boeing Alert Service

Bulletin 777–27A0059, Revision 1, dated August 18, 2005; are considered acceptable for compliance with the corresponding actions specified in paragraphs (g), (h), and (i) of this AD.

Credit for Hard-Time Replacement of HSTA

(k) Any HSTA overhauled within the compliance times specified in paragraphs (g), (h), and (i) of this AD or before the effective date of this AD—as part of a ''hard-time'' replacement program that includes removal of the HSTA from the airplane and overhaul of the stabilizer ballscrew in accordance with original equipment manufacturer component maintenance manual instructions—meets the intent of one detailed inspection, one freeplay inspection, and one lubrication of the HSTA. Therefore, any such HSTA is considered acceptable for compliance with the initial accomplishment of the actions specified in paragraphs (g), (h), and (i) of this AD, and repetitions of those actions may be determined from the performance date of that overhaul.

Parts Installation

(l) As of the effective date of this AD, no person may install, on any airplane, a horizontal stabilizer trim actuator that is not in a ''known serviceable condition'' as defined in Note 6, section 3.A., of Boeing Alert Service Bulletin 777–27A0059, Revision 2, dated January 15, 2009; unless a detailed inspection, freeplay measurement, and lubrication of that actuator are performed in accordance with paragraphs (g), (h), and (i) of this AD, as applicable.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6490; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(n) You must use Boeing Service Bulletin 777–27A0059, Revision 2, dated January 15, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, WA, on June 24, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–15639 Filed 7–7–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0380; Directorate Identifier 2008–NM–153–AD; Amendment 39–15959; AD 2009–14–09]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000EX Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

An internal review of design data has shown that the web of the left hand side (LH) stringer 13 near frame 8 might have been improperly trimmed on a few aircraft.

If not corrected, possible crack initiations could occur in the upper stringer web, and therefore could impair the structural strength of the adjacent door stop. This latent failure could ultimately lead to the loss of redundancy of the door stops, thereby affecting the structural integrity of the fuselage.

* * * * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective August 12, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 12, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 27, 2009 (74 FR 19027). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

An internal review of design data has shown that the web of the left hand side (LH) stringer 13 near frame 8 might have been improperly trimmed on a few aircraft.

If not corrected, possible crack initiations could occur in the upper stringer web, and therefore could impair the structural strength of the adjacent door stop. This latent failure could ultimately lead to the loss of redundancy of the door stops, thereby affecting the structural integrity of the fuselage.

Computational analysis has revealed a substantial reduced fatigue life for the stringer abutting onto the improperly trimmed web and has determined the need for an inspection and repair action no later than the first ''C'' check.

To address this unsafe condition, the present Airworthiness Directive (AD) mandates an inspection and a conditional rework or replacement of the web of the LH stringer 13 between frames 7 and 8.

Required actions include measuring the trimmed length of the web, inspecting for any sharp and unprotected edges of the web, and doing corrective actions if necessary. Corrective actions include reworking the web and applying protection to the web, or replacing the web, if improperly trimmed. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or

on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 12 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $960, or $80 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2009–14–09 Dassault Aviation: Amendment 39–15959. Docket No. FAA–2009–0380; Directorate Identifier 2008–NM–153–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 12, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault Model Falcon 2000EX airplanes, certificated in any category, serial numbers 102 through 124 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

An internal review of design data has shown that the web of the left hand side (LH) stringer 13 near frame 8 might have been improperly trimmed on a few aircraft.

If not corrected, possible crack initiations could occur in the upper stringer web, and therefore could impair the structural strength of the adjacent door stop. This latent failure could ultimately lead to the loss of redundancy of the door stops, thereby affecting the structural integrity of the fuselage.

Computational analysis has revealed a substantial reduced fatigue life for the stringer abutting onto the improperly trimmed web and has determined the need for an inspection and repair action no later than the first ''C'' check.

To address this unsafe condition, the present Airworthiness Directive (AD) mandates an inspection and a conditional rework or replacement of the web of the LH stringer 13 between frames 7 and 8.

Required actions include measuring the trimmed length of the web, inspecting for any sharp and unprotected edges of the web, and doing corrective actions if necessary. Corrective actions include reworking the web and applying protection to the web, or replacing the web, if improperly trimmed.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) At the later of the times in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD: Perform a detailed visual inspection to detect any sharp and unprotected edges of the web of the LH stringer 13 between frames 7 and 8, and measure the trimmed length of the web, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin F2000EX–178, dated July 1, 2008.

(i) Before the accumulation of 3,750 total flight cycles, or within 74 months since the date of issuance of the original French airworthiness certificate or the date of issuance of the original French export certificate of airworthiness, whichever occurs first.

(ii) Within 6 months after the effective date of this AD.

(2) If, during the inspection and measurement required by paragraph (f)(1) of this AD, any sharp or unprotected edge is found, or if the trimmed length is 1.57 inches (40 mm) or greater, before further flight, do all applicable corrective actions, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin F2000EX–178, dated July 1, 2008.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2008–0143, dated July 31, 2008; and Dassault Mandatory Service Bulletin F2000EX–178, dated July 1, 2008; for related information.

Material Incorporated by Reference

(i) You must use Dassault Mandatory Service Bulletin F2000EX–178, dated July 1, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, WA, on June 25, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–15855 Filed 7–7–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0263; Directorate Identifier 2008–NM–137–AD; Amendment 39–15957; AD 2009–14–07]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

This Airworthiness Directive (AD) is issued following the discovery of hot air leaks when operating the wing anti-icing system. The seals Part Number (P/N) MS29513–325, near the de-icing valves (12H1) and (12H2) in frame 33 area, do not have the proper temperature rating.

The consequences, in the area of the hot air leak, are risks of ignition of potential hydraulic leaks.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective August 12, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 12, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 26, 2009 (74 FR 13147). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

This Airworthiness Directive (AD) is issued following the discovery of hot air leaks when operating the wing anti-icing system. The seals Part Number (P/N) MS29513–325, near the de-icing valves (12H1) and (12H2) in frame 33 area, do not have the proper temperature rating.

The consequences, in the area of the hot air leak, are risks of ignition of potential hydraulic leaks.

The purpose of this AD is to verify that seals with correct temperature rating have been installed on Mystere-Falcon 20-()5 airplanes.

The corrective action includes replacing the left and right seals near de-icing valves (12H1) and (12H2) in frame area 33. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

Request To Refer to Current Revision of the Service Bulletin

Dassault Falcon Jet Corporation (Dassault) requests that we revise the NPRM to refer to Revision 1 of Dassault Mandatory Service Bulletin F20–766, dated June 24, 2008, in this AD. We referred to Dassault Service Bulletin F20–766, dated October 31, 2005, in the NPRM as the appropriate source of service information for doing the proposed requirements.

We agree. Dassault Mandatory Service Bulletin F20–766, Revision 1, dated June 24, 2008, does not specify any additional action for airplanes on which the required actions have been accomplished in accordance with the original issue of Dassault Service Bulletin F20–766, dated October 31, 2005. Also, paragraph 1.D. of Dassault Mandatory Service Bulletin F20–766,

Revision 1, dated June 24, 2008, revises the compliance to correspond with the MCAI. Therefore, we revised paragraphs (f) and (h) of this AD to refer to Dassault Mandatory Service Bulletin F20–766, Revision 1, dated June 24, 2008. We have also revised paragraph (f) of this AD to give credit for actions done before the effective date of this AD in accordance with Dassault Service Bulletin F20–766, dated October 31, 2005.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 187 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $14,960, or $80 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2009–14–07 Dassault Aviation (Formerly Avions Marcel Dassault-Breguet Aviation (AMD/BA)): Amendment 39–15957. Docket No. FAA–2009–0263; Directorate Identifier 2008–NM–137–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 12, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Mystere-Falcon 20–C5, 20–D5, 20–E5, and 20–F5 airplanes, certificated in any category, without Dassault Service Bulletin F20–766 implemented.

Subject

(d) Air Transport Association (ATA) of America Code 30: Ice and rain protection.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

This Airworthiness Directive (AD) is issued following the discovery of hot air leaks when operating the wing anti-icing system. The seals Part Number (P/N) MS29513–325, near the de-icing valves (12H1) and (12H2) in frame 33 area, do not have the proper temperature rating.

The consequences, in the area of the hot air leak, are risks of ignition of potential hydraulic leaks.

The purpose of this AD is to verify that seals with correct temperature rating have been installed on Mystere-Falcon 20–()5 airplanes.

The corrective action includes replacing the left and right seals near de-icing valves (12H1) and (12H2) in frame area 33.

Actions and Compliance

(f) Unless already done, within 7 months after the effective date of this AD, perform an inspection for a red line marking on each of the Wiggins couplings that are located near the de-icing valves (12H1) and (12H2), in accordance with Dassault Mandatory Service Bulletin F20–766, Revision 1, dated June 24, 2008. If a red line is not found, prior to further flight, replace the seals to the left and right Wiggins couplings, in accordance with Dassault Mandatory Service Bulletin F20–766, Revision 1, dated June 24, 2008. Inspections and replacements accomplished before the effective date of this AD in accordance with Dassault Service Bulletin F20–766, dated October 31, 2005, are considered acceptable for compliance with the corresponding actions specified in this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2008–0123, dated July 2, 2008; and Dassault Mandatory Service Bulletin F20–766, Revision 1, dated June 24, 2008; for related information.

Material Incorporated by Reference

(i) You must use Dassault Mandatory Service Bulletin F20–766, Revision 1, dated June 24, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 24, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–15638 Filed 7–7–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0417; Directorate Identifier 2009–NE–13–AD; Amendment 39–15955; AD 2009–14–05]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Models PW2037, PW2037(M), and PW2040 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Pratt & Whitney models PW2037, PW2037(M), and PW2040 turbofan engines. This AD requires 12th stage disks of certain high-pressure compressor (HPC) drum rotor disk assemblies, to be inspected for cracks by Pratt & Whitney using a special eddy current inspection procedure. This AD results from six HPC 12th stage disks found cracked during HPC module disassembly at overhaul. We are issuing this AD to prevent uncontained failure of the HPC 12th stage disk and airplane damage.

DATES: This AD becomes effective July 23, 2009. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of July 23, 2009.

We must receive any comments on this AD by September 8, 2009.

ADDRESSES: Use one of the following addresses to comment on this AD:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Docket Management Facility, Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *mark.riley@faa.gov*; telephone (781) 238–7758, fax (781) 238–7199.

Contact Pratt & Whitney, 400 Main Street, East Hartford, CT 06108, for the service information identified in This AD.

SUPPLEMENTARY INFORMATION: In November 2006, a Pratt & Whitney model PW2037 turbofan engine was found to have a cracked HPC 12th stage disk during routine overhaul. The crack extended from the disk bore to the disk rim. Investigation by Pratt & Whitney revealed that the disk had a material defect that occurred during original manufacture. In July 2007, a second HPC 12th stage disk was found cracked with the same defect. In response to the cracking, Pratt & Whitney issued Alert Service Bulletin (ASB) No. PW2000 A72–736 on January 5, 2009, recommending removal of 26 additional HPC 12th stage disks, manufactured from this same material heat. Pratt concluded that this population might have the same material defects and therefore, be susceptible to cracking. Thereafter, in February 2009, after Pratt & Whitney issued the ASB, we became aware of four additional HPC 12th stage disks, manufactured from the same material heat, that had small cracks in the disk bores that originated from similar material defects. Because of Pratt & Whitney's recommended short compliance times in the ASB, we are issuing this final rule; request for comments AD. This condition, if not corrected, could result in uncontained failure of the HPC 12th stage disk and airplane damage.

Relevant Service Information

We have reviewed and approved the technical contents of Pratt & Whitney ASB No. PW2000 A72–736, dated January 5, 2009. That ASB describes procedures for having Pratt & Whitney perform the special eddy-current inspection performed on the 12th stage disks.

Differences Between This AD and the Service Information

The recommended compliance times in the Pratt & Whitney ASB are stated as calendar dates for each engine model. We specify cycles-in-service rather than calendar dates, because the risk of crack development is cycle, not time dependant.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop

on other Pratt & Whitney models PW2037, PW2037(M), and PW2040 turbofan engines of the same type design. For that reason, we are issuing this AD to prevent uncontained failure of the HPC 12th stage disk and airplane damage. This AD requires 12th stage disks of certain HPC drum rotor disk assemblies, to be inspected for cracks by Pratt & Whitney using a special eddy current inspection procedure.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. FAA–2009–0417; Directorate Identifier 2009–NE–13–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2009–14–05 Pratt & Whitney: Amendment 39–15955. Docket No. FAA–2009–0417; Directorate Identifier 2009–NE–13–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 23, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Pratt & Whitney models PW2037, PW2037(M), and PW2040 turbofan engines, with the following high-pressure compressor (HPC) drum rotor disk assemblies installed:

TABLE 1—AFFECTED HPC DRUM ROTOR DISK ASSEMBLIES

Drum Rotor Disk Assembly Part No. 1B3702; 1B3702–001; 1B3610; 1B3610–001; or 1B7377— Serial No.	12th Stage Disk Billet and Heat No.
T62805	T/LALY–4013
R80293	T/LALY–4012
R80289	T/LALY–4010
R80322	T/LALY–4009
R80330	T/LALY–4008
R78394	T/LALY–4007
R80281	T/LALY–4006
R80304	T/LALY–4005
R80343	T/LALY–4004
R80299	T/LALY–4003
R80313	T/LALY–4002
R80333	M1/LALY–4035
R80324	M1/LALY–4034
R80310	M1/LALY–4033
R80326	M1/LALY–4030
R80305	M1/LALY–4026
R80315	M1/LALY–4025
R80309	M1/LALY–4024
R80341	M1/LALY–4023
R80329	M1/LALY–4022
R80312	M1/LALY–4020
R80321	M1/LALY–4019
R80319	M2/LALY–4040
R80358	M2/LALY–4039
R80302	M2/LALY–4038
R80336	M2/LALY–4037

These engines are installed on, but not limited to, Boeing 757–200 and 757–300 airplanes.

Unsafe Condition

(d) This AD results from six HPC 12th stage disks found cracked during HPC module disassembly at overhaul. We are issuing this

AD to prevent uncontained failure of the HPC 12th stage disk and airplane damage.

Compliance

(e) You are responsible for having the actions required by this AD performed at the following compliance times:

(1) For PW2040 turbofan engines, within 200 cycles-in-service (CIS) after the effective date of this AD, unless the actions have already been done.

(2) For PW2037 and PW2037(M) turbofan engines, within 400 CIS after the effective date of this AD, unless the actions have already been done.

Non-Destructive Inspection

(f) Have a special eddy-current inspection performed on the 12th stage disks installed in the HPC drum rotor disk assemblies listed in Table 1 of this AD, for cracks. Use paragraph 1 of the Accomplishment Instructions of Pratt & Whitney Alert Service Bulletin No. PW2000 A72–736, dated January 5, 2009, to do the special eddy current inspection.

Alternative Methods of Compliance

(g) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Contact Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *mark.riley@faa.gov;* telephone (781) 238–7758, fax (781) 238–7199.

Material Incorporated by Reference

(i) You must use Pratt & Whitney Alert Service Bulletin No. PW2000 A72–736, dated January 5, 2009, to have the special eddy current inspections performed by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Pratt & Whitney, 400 Main Street, East Hartford, CT 06108, for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on June 23, 2009.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–15398 Filed 7–7–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1116; Directorate Identifier 2007–NM–231–AD; Amendment 39–15954; AD 2009–14–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. For certain airplanes, this AD requires deactivating or modifying the wiring to the outboard landing lights, until the wire bundles and electrical connectors have been replaced. For all airplanes, this AD also requires inspecting for any broken, damaged, or missing fairleads, grommets, and wires in the four electrical junction boxes of the main wheel well, and corrective actions if necessary. For certain airplanes, this AD also requires replacing certain wire bundles for the landing lights and fuel shutoff valves, and related investigative, other specified, and corrective actions if necessary. For certain airplanes, this AD also requires replacing of certain electrical connectors and backshell clamps. This AD results from reports of uncommanded engine shutdowns and burned and damaged wire bundles associated with the outboard landing lights and engine fuel shutoff valves. This AD also results from reports of damaged and missing grommets and broken and damaged fairleads in the electrical junction boxes of the main wheel well. We are issuing this AD to prevent a hot short between the outboard landing light and fuel shutoff valve circuits, which could result in an uncommanded engine shutdown. We are also issuing this AD to prevent corrosion of the electrical connectors of the wing rear spars, which could result in short circuits and consequent incorrect functioning of airplane systems needed for safe flight and landing.

DATES: This AD is effective August 12, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of August 12, 2009.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Stephen Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6480; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. That NPRM was published in the **Federal Register** on October 22, 2008 (73 FR 62937). That NPRM proposed to require deactivating or modifying of the wiring to the outboard landing lights, until the wire bundles and electrical connectors have been replaced. For all airplanes, that NPRM proposed to require inspecting for any broken, damaged, or missing fairleads, grommets, and wires in the four electrical junction boxes of the main wheel well, and corrective actions if necessary. For certain airplanes, that NPRM also proposed to require replacing of certain wire bundles for the landing lights and fuel shutoff valves, and related investigative, other specified, and corrective actions if necessary. For certain airplanes, that NPRM also proposed to require replacing certain electrical connectors and backshell clamps.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the two commenters.

Support for the NPRM

Boeing concurs with the contents of the NPRM.

Request for Work Instructions Correction

Southwest Airlines states that there appears to be an error in the work instructions of Boeing Alert Service Bulletin 737–33A1140, dated May 22, 2006. Figure 2 (left wing) gives instructions to route new wires, and Figure 4 (right wing) has no work instructions for wire termination in either figure.

We infer that Southwest Airlines requests that we revise the final rule to account for these apparent service bulletin errors and that clarification is necessary. Instructions for terminating the new wires are provided by the work instructions associated with Figure 1 (left wing) and Figure 3 (right wing) in Boeing Alert Service Bulletin 737–33A1140, dated May 22, 2006. We have not changed the final rule regarding this issue.

Request Alternative to Corrective Action

Southwest Airlines proposes that we revise the NPRM to require the use of detailed inspections of the referenced wire bundles of the landing lights and fuel shutoff valves, as well as performing operational checks of these items at 180-day intervals from the effective date of this AD, as a substitute for the corrective actions described by paragraph (f) of the proposed AD. The commenter states that the deactivation of the outboard landing lights per paragraph (f)(1) of the NPRM would be considered a temporary solution and would not provide a positive operational situation.

We disagree. The alternative corrective action proposed by the commenter will not effectively address the potential unsafe condition for the following reasons:

1. The short circuiting of the wires for the landing lights and engine fuel shutoff valves occurs within the wire bundle, which is covered by a protective overbraid. It is not possible to visually inspect the affected wires without partially removing the overbraid and disturbing the wires, which could cause the wires to be damaged.

2. Operational testing of the outboard landing lights and the engine fuel shutoff valves at 180-day intervals will not be effective in detecting the failures since the short circuits occur suddenly and are not preceded by symptoms that indicate the onset of the failure.

3. The corrective actions described by paragraph (f) of this AD are intended to be a temporary solution to the potential unsafe condition until sufficient replacement wire bundles can be manufactured to allow incorporating the final corrective action into the affected airplanes. The final corrective action is described by paragraph (g) of this AD. The compliance time for doing the final corrective action required by paragraph (g) of this AD is within 60 months. Mandating the final corrective action without the corrective action of paragraph (f) is not considered acceptable because this would expose the airplanes of the affected fleet to the potential unsafe condition for an excessive amount of time.

We have not changed the final rule regarding this issue. However, operators may request approval of an alternative method of compliance in accordance with paragraph (j) of this AD.

Explanation of Changes to Costs of Compliance

We have revised the Costs of Compliance to specify only the per product cost for deactivating and modifying the wiring to the outboard landing lights. We are not specifying the total cost for all affected airplanes for those two actions because operators may accomplish either action.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that the actions specified in Boeing Alert Service Bulletin 737–33A1140 affect about 511 Model 737–300, –400, and –500 series airplanes of U.S. registry. Operators may accomplish either the deactivation or modification.

We estimate that it takes about 1 work-hour per product to comply with the deactivation specified in this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the deactivation, if done, to the U.S. operators to be $80 per product.

We estimate that it takes about 31 work-hours per product to comply with the modification specified in this AD. The average labor rate is $80 per work-hour. Required parts for the modification cost about $573 per product. Based on these figures, we estimate the cost of modification, if done, to the U.S. operators to be $3,053 per product.

We estimate that the actions specified in Boeing Service Bulletin 737–28–1241, Revision 1, dated August 31, 2007, affect up to 891 Model 737–100, –200, –200C, –300, –400, and –500 series airplanes of U.S. registry. The following table provides the estimated costs, at an average labor rate of $80 per work-hour, for U.S. operators to comply with the actions specified in that service bulletin.

ESTIMATED COSTS

Action	Work-hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Part 1—Replacement of wire bundles	Up to 91	Up to $18,439	$25,719	511	$13,142,409
Part 2—Inspection of junction boxes	1	0	80	891	71,280
Part 3—Replacement of electrical connectors	2	298	458	400	183,200

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures

the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2009–14–04 Boeing: Amendment 39–15954. Docket No. FAA–2008–1116; Directorate Identifier 2007–NM–231–AD.

Effective Date

(a) This airworthiness directive (AD) is effective August 12, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category; as identified in Boeing Service Bulletin 737–28–1241, Revision 1, dated August 31, 2007.

Unsafe Condition

(d) This AD results from reports of uncommanded engine shutdowns and burned and damaged wire bundles associated with the outboard landing lights and engine fuel shutoff valves. This AD also results from reports of damaged and missing grommets and broken and damaged fairleads in the electrical junction boxes of the main wheel well. We are issuing this AD to prevent a hot short between the outboard landing light and fuel shutoff valve circuits, which could result in an uncommanded engine shutdown. We are also issuing this AD to prevent corrosion of the electrical connectors of the wing rear spars, which could result in short circuits and consequent incorrect functioning of airplane systems needed for safe flight and landing.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Deactivating or Modifying the Outboard Landing Lights

(f) For Model 737–300, –400, and –500 series airplanes identified in Boeing Alert Service Bulletin 737–33A1140, dated May 22, 2006: Within 180 days after the effective date of this AD, accomplish the actions specified in either paragraph (f)(1) or (f)(2) of this AD. Accomplishing the applicable actions required by paragraph (g) of this AD terminates the requirements of this paragraph.

(1) Deactivate the outboard landing lights by accomplishing all of the actions specified in Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–33A1140, dated May 22, 2006.

Note 1: The Master Minimum Equipment List (MMEL) prohibits dispatching an airplane for night operations with deactivated outboard landing lights in the event that either of the inboard landing lights fail. Operators should note that, if the outboard landing lights are deactivated in accordance with Part 1 of Boeing Alert Service Bulletin 737–33A1140, dated May 22, 2006, there is no MMEL relief allowing for this configuration for night operations should any inboard landing light fail.

(2) Modify the wiring to the outboard landing lights by accomplishing all of the actions specified in Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–33A1140, dated May 22, 2006.

Inspection and Replacements

(g) For all airplanes: Within 60 months after the effective date of this AD, do the applicable actions specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Service Bulletin 737–28–1241, Revision 1, dated August 31, 2007. For Model 737–300, –400, and –500 series airplanes identified in Boeing Alert Service Bulletin 737–33A1140, dated May 22, 2006, accomplishing the applicable actions required by this paragraph terminates the requirements of paragraph (f) of this AD.

(1) Replace the wire bundles for the landing lights and fuel shutoff valves with new, redesigned wire bundles, and do the related investigative, other specified, and corrective actions, as applicable. The related investigative, other specified, and corrective actions must be done before further flight after the replacement.

(2) Do a detailed inspection for any broken, damaged, or missing fairleads, any damaged or missing grommets, and any chafed or damaged wires or wire bundles in the four electrical junction boxes of the main wheel well, and do the applicable corrective actions. The corrective actions must be done before further flight after the inspection.

(3) Replace the electrical connectors and backshell clamps with new, improved electrical connectors and backshell clamps, as applicable.

Credit for Actions Done According to Previous Issue of Service Bulletin

(h) For airplanes identified as Groups 1 and 2 in Boeing Service Bulletin 737–28–1241, Revision 1, dated August 31, 2007: Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 737–28–1241, dated April 7, 2006, are acceptable for compliance with the requirements of paragraph (g) of this AD.

(i) For all airplanes: Actions done before the effective date of this AD in accordance with Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 737–28–1241, dated April 7, 2006, are acceptable for compliance with the requirements of paragraph (g)(2) of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Stephen Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6480; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(k) You must use Boeing Service Bulletin 737–28–1241, Revision 1, dated August 31, 2007; and Boeing Alert Service Bulletin 737–33A1140, dated May 22, 2006; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial

Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, WA, on June 11, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–15405 Filed 7–7–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0446; Directorate Identifier 2009–CE–024–AD; Amendment 39–15960; AD 2009–14–10]

RIN 2120–AA64

Airworthiness Directives; EADS–PZL ''Warszawa-Okęcie'' S.A. Model PZL–104 WILGA 80 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

An inspection of a PZL–104 aeroplane that had a relatively long operational background revealed a severe corrosion of the steel front fuselage structural elements.

It is likely that such corrosion can also be present on other aeroplanes of similar design and operational history.

If left uncorrected, this condition could lead to loss of strength of the structural front posts elements and consequent reduction of the structural strength of the aeroplane.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective August 12, 2009.

On August 12, 2009, the Director of the Federal Register approved the incorporation by reference of PZL–104 Wilga 80 Maintenance Manual, pages 5–4 and 25–10, dated April 7, 2009, listed in this AD.

As of May 18, 2009 (74 FR 18979; April 27, 2009), the Director of the Federal Register approved the incorporation by reference of EADS–PZL ''Warszawa-Okęcie'' S.A. Mandatory Bulletin No. 10409036, dated March 18, 2009, listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4059; *fax:* (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 12, 2009 (74 FR 22127), and proposed to supersede AD 2009–09–04, Amendment 39–15890 (74 FR 18979, April 27, 2009). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

An inspection of a PZL–104 aeroplane that had a relatively long operational background revealed a severe corrosion of the steel front fuselage structural elements.

It is likely that such corrosion can also be present on other aeroplanes of similar design and operational history.

If left uncorrected, this condition could lead to loss of strength of the structural front posts elements and consequent reduction of the structural strength of the aeroplane.

For the reason stated above, this Airworthiness Directive (AD) mandates inspecting the fuselage front posts, repairing any corrosion found and replacing pads made of foam rubber by pads made of Neoprene to prevent water ingression.

The Administrative Procedure Act does not permit including long-term requirements in an urgent safety of flight action where the rule becomes effective at the same time the public has the opportunity to comment. We analyzed the short-term action and the long-term actions of the MCAI separately to determine the necessity of public notice. Therefore, AD 2009–09–04 addressed the initial short-term inspection requirement of the MCAI, but we did not include the required long-term repetitive inspections in the immediately adopted rule. We proposed the long-term repetitive inspections in the NPRM to allow public comment.

The NPRM retained the short-term initial inspection and proposed the mandatory long-term action of repetitively inspecting the fuselage front posts through a revision to the airplane maintenance program.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 26 products of U.S. registry. We also estimate that it will take about 50 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $150 per product.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $107,900 or $4,150 per product.

In addition, we estimate that any necessary follow-on actions would take about 10 work-hours and require parts costing $0, for a cost of $800 per product. We have no way of

determining the number of products that may need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD Docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15890 (74 FR 18979; April 27, 2009) and adding the following new AD:

2009–14–10 EADS–PZL Warszawa-Okecie S.A.: Amendment 39–15960; Docket No. FAA–2009–0446; Directorate Identifier 2009–CE–024–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 12, 2009.

Affected ADs

(b) This AD supersedes AD 2009–09–04, Amendment 39–15890.

Applicability

(c) This AD applies to Model PZL–104 WILGA 80 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 53: Fuselage.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

An inspection of a PZL–104 aeroplane that had a relatively long operational background revealed a severe corrosion of the steel front fuselage structural elements.

It is likely that such corrosion can also be present on other aeroplanes of similar design and operational history.

If left uncorrected, this condition could lead to loss of strength of the structural front posts elements and consequent reduction of the structural strength of the aeroplane.

For the reason stated above, this Airworthiness Directive (AD) mandates inspecting the fuselage front posts, repairing any corrosion found and replacing pads made of foam rubber by pads made of Neoprene to prevent water ingression.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within 12 years from date of manufacture or within the next 2 months after May 18, 2009 (the effective date of AD 2009–09–04), whichever occurs later, inspect the fuselage front posts for signs of corrosion following paragraph 6.A. of EADS PZL ''Warszawa-Okecie'' S.A. Mandatory Bulletin No. 10409036, dated March 18, 2009.

(2) If corrosion or any corrosion damage is found during the inspection required in paragraph (f)(1) of this AD, before further flight, repair or replace any parts where corrosion or corrosion damage was found in accordance with an FAA-approved repair solution obtained from EADS–PZL ''Warszawa-Okęcie'' S.A, Aleja Krakowska 110/114, 00–971 Warszawa, Poland; *telephone:* +48 22 577 22 11; *fax:* +48 22 577 22 03; *e-mail: eadsplz@plz.eads.net.*

(3) Within 12 years from date of manufacture or within the next 2 months after May 18, 2009 (the effective date of AD 2009–09–04), whichever occurs later, replace the rear glass padding following paragraph 6.C. of EADS PZL ''Warszawa-Okecie'' S.A. Mandatory Bulletin No. 10409036, dated March 18, 2009.

(4) Within 2 months after August 12, 2009 (the effective date of this AD), amend the approved operator's airplane maintenance program to incorporate the applicable tasks as described in PZL–104 Wilga 80 Maintenance Manual, pages 5–4 and 25–10, dated April 7, 2009.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4059; *fax:* (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) MCAI European Aviation Safety Agency (EASA) AD No.: 2009–0072, dated March 31, 2009, EADS PZL ''Warszawa-

Okęcie'' S.A. Mandatory Bulletin No. 10409036, dated March 18, 2009; and PZL–104 Wilga 80 Maintenance Manual, pages 5–4 and 25–10, dated April 7, 2009, for related information.

Material Incorporated by Reference

(h) You must use EADS PZL ''Warszawa-Okęcie'' S.A. Mandatory Bulletin No. 10409036, dated March 18, 2009; and PZL–104 Wilga 80 Maintenance Manual, pages 5–4 and 25–10, dated April 7, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of PZL–104 Wilga 80 Maintenance Manual, pages 5–4 and 25–10, dated April 7, 2009, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On May 18, 2009 (74 FR 18979; April 27, 2009), the Director of the Federal Register previously approved the incorporation by reference of EADS PZL ''Warszawa-Okęcie'' S.A. Mandatory Bulletin No. 10409036, dated March 18, 2009.

(3) For service information identified in this AD, contact EADS–PZL ''Warszawa-Okęcie'' S.A., Aleja Krakowska 110/114, 00–971 Warszawa, Poland; telephone: +48 22 577 22 11; fax: +48 22 577 22 03; e-mail: eadsplz@plz.eads.net; Internet: *http://www.eads.net/1024/en/businet/airbus/airbus_military/pzl/pzl.html.*

(4) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(5) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on June 30, 2009.

Scott A. Horn,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–15917 Filed 7–7–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2009–0302]

RIN 1625–AA08

Special Local Regulation, Maggie Fischer Memorial Great South Bay Cross Bay Swim, Great South Bay, NY

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is establishing a permanent Special Local Regulation on Great South Bay, NY between Gilbert Park, Brightwaters, NY and Fire Island Lighthouse Dock, Fire Island, NY due to the annual Maggie Fischer Memorial Great South Bay Cross Bay Swim. This Special Local Regulation is necessary to provide for the swimmers' safety of life on the navigable waters of Great South Bay, NY. Entry into this regulated area is prohibited unless authorized by the Captain of the Port Long Island Sound, New Haven, CT.

DATES: This interim rule is effective July 23, 2009. Comments and related material must reach the Coast Guard on or before September 8, 2009.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0302 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov*.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this interim rule, call or e-mail: MSTC Christie Dixon, Prevention Department, USCG Sector Long Island Sound at 203–468–4459, *christie.m.dixon@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0302), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2009–0302'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert USCG–2009–0302 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Regulatory Information

The Coast Guard is issuing this interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of interim rulemaking (NPRM) with respect to this rule because the delay or cancellation of this event in order to permit a notice period would be contrary to the pubic interest. In order to balance the tradition of the Cross Bay Swim and the concern for the swimmers' safety, a special local regulation is essential despite the limited time available for public notice and comment. While this is an annual event, the date for the 2009 swim and subsequent permit application were not received by the Coast Guard in sufficient time to allow for a full notice and comment period; therefore, the Coast Guard is issuing this interim rule with a request for comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. In order to balance the tradition of the Cross Bay Swim and the concern for the swimmers' safety, a special local regulation is essential despite the limited time available for public notice and comment. While this is an annual event, the date for the 2009 swim and subsequent permit application were not received by the Coast Guard in sufficient time to allow for a full notice and comment period; therefore, the Coast Guard is issuing this interim rule with a request for comments.

Background and Purpose

The Cross Bay Swim has been successfully held on and off from the early 1900s on the waters of Great South Bay, NY. This 5.25-mile swim has historically involved up to 100 swimmers and accompanying safety craft that travel along a course located directly north of the Fire Island Lighthouse Dock, NY and extending to Gilbert Park in Brightwaters, NY. Currently there is no regulation in place to protect the swimmers or safety craft from the hazards imposed by passing water traffic and other water related activities.

To ensure the continued safety of the swimmers, safety craft and the boating public, the Coast Guard is establishing a special local regulation around the race course for the duration of the race, generally from 6:30 a.m. to 12:30 p.m. on the day of the race.

Discussion of Rule

This regulation establishes a special local regulation on the navigable waters of Great South Bay, NY within 100 yards of the swim event race course which consists of the following points: Starting Point at the Fire Island Lighthouse Dock in approximate position 40°38′01″ N 073°13′07″ N, northerly through approximate points 40°38′52″ N 073°13′09″ N, 40°39′40″ N 073°13′30″ N, 40°40′30″ N 073°14′00″ N, and finishing at Gilbert Park, Brightwaters, NY at approximate position 40°42′25″ N 073°14′52″ N. This action will limit vessel traffic in this portion of Great South Bay, NY to provide for the safety of swimmers, swimmer safety craft and the boating community from the hazards posed by vessels operating near persons participating in this open water swim.

While the special local regulation will be permanent, it will only be active and enforceable for approximately six hours on a single specified day each July. Marine traffic that may safely do so, may transit outside of the area during the enforcement period, allowing navigation in all other portions of Great South Bay, NY not covered by this rule. Entry into this area would be prohibited unless authorized by the Captain of the Port, Long Island Sound or Designated On-scene Patrol Personnel. Any violation of the special local regulation described herein is punishable by, among others, civil and criminal penalties, in rem liability against the offending vessel, and license sanctions.

Regulatory Analyses

We developed this interim rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This regulation may have some impact on the public, but the potential impact would be minimized for the following reason: Vessels may transit in all areas of Great South Bay, NY other than the area of the special local regulation with minimal increased transit time and the special local regulation will only be enforced for approximately 6 hours on a single specified day each July.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit in those portions of Great South Bay, NY covered by the special local regulation. Although the special local regulation would apply to the entire width of the bay, traffic would be allowed to pass through the regulated area, outside 100 yards of any swimmer, with the permission of the Captain of the Port or Designated On-scene Patrol Personnel. Before the activation of the special local regulation, we would issue maritime advisories widely available to users of the

waterway. For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact: MSTC Christie Dixon, Prevention Department, USCG Sector Long Island Sound at 203–468–4459, *christie.m.dixon@uscg.mil*. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves the promulgation of a special local regulation issued in conjunction with a marine event for which a permit is required. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.124 to read as follows:

§ 100.124: Maggie Fischer Memorial Great South Bay Cross Bay Swim, Great South Bay, New York.

(a) *Regulated area.* All navigable waters of Great South Bay, NY within 100 yards of the swim event race course which consists of the following points: Starting Point at the Fire Island Lighthouse Dock in approximate position 40°38′01″ N 073°13′07″ N, northerly through approximate points 40°38′52″ N 073°13′09″ N, 40°39′40″ N 073°13′30″ N, 40°40′30″ N 073°14′00″ N, and finishing at Gilbert Park, Brightwaters, NY at approximate position 40°42′25″ N 073°14′52″ N.

(b) *Definitions.* The following definition applies to this section: *Designated On-scene Patrol Personnel,* means any commissioned, warrant and petty officers of the U.S. Coast Guard operating Coast Guard vessels who have been authorized to act on the behalf of the Captain of the Port, Long Island Sound.

(c) *Special local regulation.* (1) No person or vessel may enter, transit, or remain within the regulated area during the effective period of regulation unless they are officially participating in the Maggie Fischer Memorial Great South Bay Cross Bay Swim event or are otherwise authorized by the Designated On-scene Patrol Personnel.

(2) All persons and vessels must comply with the instructions from Coast Guard Captain of the Port or the Designated On-scene Patrol Personnel. The Designated On-scene Patrol Personnel may delay, modify, or cancel the swim event as conditions or circumstances require.

(3) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(4) Persons and vessels desiring to enter the regulated area may request permission to enter from the designated on scene patrol personnel on VHF–16 or to the Captain of the Port, Long Island Sound via phone at (203) 468–4401.

(d) *Enforcement Period.* This rule is enforced from 6:30 a.m. to 12:30 p.m. on July 24th, 2009 and annually thereafter on a date in July to be specified in the Local Notice to Mariners and through marine broadcasts.

Dated: June 17, 2009.

Daniel A. Ronan,

Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.

[FR Doc. E9–16072 Filed 7–7–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2009–0252]

RIN 1625–AA08

Special Local Regulation for Marine Event; Temporary Change of Dates for Recurring Marine Event in the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the enforcement period of special local regulations for a recurring marine event in the Fifth Coast Guard District. These regulations apply to only one recurring marine event that conducts ''workboat races''. Special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the York River, VA, during the event.

DATES: This rule is effective from 9 a.m. to 5:30 p.m., on July 12, 2009, except that the suspension of line 41 in the table to § 100.501 is effective from July 12, 2009 to July 31, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0252 and are available online by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0252 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Dennis Sens, Project Manager, Fifth Coast Guard District, Prevention Division, at 757–398–6204 or e-mail at *Dennis.M.Sens@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 12, 2009, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulation for Marine Event; Temporary Change of Dates for Recurring Marine Event in the Fifth Coast Guard District in the **Federal Register** (74 FR 22142). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** The potential dangers posed by boat races operating in close proximity to transiting vessels make special local regulations necessary. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, patrol vessels, spectator craft and other vessels transiting the event area. However, the Coast Guard will provide advance notifications to users of the affected waterways via marine information broadcasts, local notice to mariners, commercial radio stations and area newspapers.

Background and Purpose

Marine events are frequently held on the navigable waters within the boundary of the Fifth Coast Guard District. The on water activities that typically comprise marine events include sailing regattas, power boat races, swim races and holiday parades. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

This regulation proposes to temporarily change the enforcement period of special local regulations for a recurring marine event within the Fifth Coast Guard District. This proposed regulation applies to one marine event in 33 CFR 100.501, Table to § 100.501.

On July 12, 2009, the Watermen's Museum of Yorktown, Virginia will sponsor the ''Watermen's Heritage Festival Workboat Races'', on the waters of the York River near Yorktown, Virginia. The regulation at 33 CFR 100.501 is effective annually for this river boat race marine event. The event will consist of approximately 40 traditional Chesapeake Bay deadrise workboats racing along a marked straight line race course in heats of 2 to 4 boats for a distance of approximately 1,000 yards. A fleet of spectator vessels is anticipated to gather nearby to view the competition. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels. The regulation at 33 CFR 100.501 would be enforced for the duration of the event. Under provisions of 33 CFR 100.501, from 9 a.m. to 5:30 p.m. on July 12, 2009, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on

specified waters of the York River, near Yorktown, Virginia.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Although this rule prevents traffic from transiting a portion of the York River during specified events, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans accordingly. Additionally, this rulemaking does not change the permanent regulated areas that have been published in 33 CFR 100.501, Table to § 100.501. In some cases vessel traffic may be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the York River where marine events are being held. This regulation will not have a significant impact on a substantial number of small entities because it will be enforced only during marine events that have been permitted by the Coast Guard Captain of the Port. The Captain of the Port will ensure that small entities are able to operate in the areas where events are occurring when it is safe to do so. In some cases, vessels will be able to safely transit around the regulated area at various times, and, with the permission of the Patrol Commander, vessels may transit through the regulated area. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their

regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves implementation of regulations within 33 CFR part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interests of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sailboard racing.

Under figure 2–1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. In the Table to § 100.501:

■ a. Suspend line No. 41 from July 12, 2009 to July 31, 2009; and

■ b. From 9 a.m. to 5:30 p.m., on July 12, 2009, add line No. 63.

The addition reads as follows:

§ 100.501. Special Local Regulations; Marine Events in the Fifth Coast Guard District.

* * * * *

Table to § 100.501.—All coordinates listed in the Table to § 100.501 reference Datum NAD 1983.

COAST GUARD SECTOR HAMPTON ROADS—COTP ZONE

Number	Date	Event	Sponsor	Location
*	*	*	*	*
63	July 12, 2009	Watermen's Heritage Festival Workboat Races.	Watermen's Museum of Yorktown, VA.	The waters of the York River, Yorktown, Virginia, bounded on the west by a line drawn along longitude 076°31′25″ W, bounded on the east by a line drawn along longitude 076°30′55″ W, bounded on the south by the shoreline and bounded on the north by a line drawn parallel and 400 yards north of the southern shoreline.

Dated: June 24, 2009.

Fred M. Rosa, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E9–16063 Filed 7–2–09; 4:15 pm]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0739; FRL–8423–3]

Sodium 1,4-Dialkyl Sulfosuccinates; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of sodium 1,4-dialkyl sulfosuccinates including sodium 1,4-dihexyl sulfosuccinate (CAS Reg. No. 3006–15–3); sodium 1,4–diisobutyl sulfosuccinate (CAS Reg. No. 127–39–9); and sodium 1,4–dipentyl sulfosuccinate (CAS Reg. No. 922–80–5) when used as inert ingredients in pesticide formulations applied to growing crops. The Joint Inerts Task Force (JITF), Cluster Support Team Number 13 submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of sodium 1,4–dialkyl sulfosuccinates.

DATES: This regulation is effective July 8, 2009. Objections and requests for hearings must be received on or before September 8, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0739. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The

Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Kerry Leifer, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8811; e-mail address: *leifer.kerry@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0739 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before September 8, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2008–0738, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background

In the **Federal Register** of December 3, 2008 (73 FR 73640) (FRL–8390–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E7423) by The Joint Inerts Task Force (JITF), Cluster Support Team Number 23 (CST 13), c/o CropLife America, 1156 15th Street, N.W., Suite 400, Washington, DC 20005. The petition was subsequently redesignated as PP 8E7422. The petition requested that 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of the inert ingredients sodium 1,4-dialkyl sulfosuccinates including sodium 1,4-dihexyl sulfosuccinate (CAS Reg. No. 3006–15–3); sodium 1,4-diisobutyl sulfosuccinate (CAS Reg. No. 127–39–9); and sodium 1,4-dipentyl sulfosuccinate (CAS Reg. No. 922–80–5) (these substances are also collectively referred to throughout this document as SDSS). That notice referenced a summary of the petition prepared by the JITF CST 13, the petitioner which is available to the public in the docket, *http://www.regulations.gov*. There were no substantive comments received in response to the notice of filing.

This petition was submitted in response to a final rule of August 9, 2006, (71 FR 45415) (FRL–8084–1) in which the Agency revoked, under section 408(e)(1) of the Federal Food, Drug, and Cosmetic Act (FFDCA), the existing exemptions from the requirement of a tolerance for residues of certain inert ingredients because of insufficient data to make the determination of safety required by FFDCA section 408(b)(2). The expiration date for the tolerance exemptions subject to revocation was August 9, 2008, which was later extended to August 9, 2009 (73 FR 45317) to allow for data to be submitted to support the establishment of tolerance exemptions for these inert ingredients prior to the effective date of the tolerance exemption revocation.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the

legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for exemption from the requirement of a tolerance for residues of sodium 1,4-dialkyl sulfosuccinates when used as inert ingredients in pesticide formulations applied to growing crops or food-producing animals. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Sodium 1,4-dialkyl sulfosuccinates have moderate to low acute oral toxicity and low dermal acute toxicity. There was no hazard identified in a combined repeat dose rat reproductive/developmental screening study at the limit dose of 1,000 milligrams/kilogram/day (mg/kg/day) to either parental animals or their offspring. There is no concern for neurotoxicity, immunotoxicity or carcinogenicity for SDSS.

Specific information on the studies received and the nature of any observed effects caused by the sodium 1,4-dialkyl sulfosuccinates as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Sodium 1,4-Dialkyl Sulfosuccinates (JITF CST 13 Inert Ingredients). Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations'' pages 6–8 in docket ID number EPA–HQ–OPP–2008–0739.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-term, intermediate-term, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

There was no hazard identified in a combined repeated dose toxicity study with the reproduction/developmental toxicity screening test in rats with SDSS at the limit dose of 1,000 milligrams/kilogram/day (mg/kg/day) to either parental animals or their offspring. Thus, due to their low potential hazard and the lack of a hazard endpoint, the Agency has determined that a quantitative risk assessment using safety factors applied to a point of departure protective of an identified hazard endpoint is not appropriate.

No mutagenicity, genotoxicity or chronic toxicity data have been located for any of the sodium 1,4-dialkyl sulfosuccinates. However, no structural alerts for genotoxicity or carcinogenicity were identified in a qualitative structure activity relationship (SAR) database, DEREK Version 11. In addition, data for similar compounds showed they are not mutagenic or carcinogenic. The primary alcohol mammalian metabolites of SDSS have been shown to be negative in the *in vitro* Ames test. Furthermore, a structurally similar compound that is also used as an inert ingredient, sodium dioctyl sulfosuccinate (CAS Reg. No. 577–11–7) was not mutagenic, or carcinogenic in a chronic rat study or a tumor promotion study. Based on the above, sodium 1,4-dialkyl sulfosuccinates are not expected to be carcinogenic.

C. Exposure Assessment

1. *Dietary exposure (from food and feed uses and drinking water).* Since an endpoint for risk assessment was not identified, an exposure assessment for SDSS was not conducted. Any possible dietary exposure SDSS from their use as inert ingredients in pesticide products would be through consumption of food to which pesticide products containing SDSS have been applied and through drinking water (from runoff).

2. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Since an endpoint for risk assessment was not identified, a quantitative residential exposure assessment for SDSS was not conducted. Residential exposures to SDSS may occur as a result of the use of pesticide products containing SDSS as inert ingredients (such as

antimicrobial hard surface cleaners) as well as from other, nonpesticidal, residential use products containing SDSS.

3. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found SDSS to share a common mechanism of toxicity with any other substances, and sodium 1,4-dialkyl sulfosuccinates do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that sodium 1,4-dialkyl sulfosuccinates do not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

The toxicity database for SDSS is adequate for FQPA assessment and the potential exposure is adequately characterized given the low toxicity of the chemical. There was no hazard identified in a combined repeat dose rat reproductive/developmental screening study at the limit dose of 1,000 mg/kg/day to either parental animals or their offspring. There is no concern for neurotoxicity, immunotoxicity or carcinogenicity for the sodium 1,4-dialkyl sulfosuccinates.

Based on this information, there is no concern, at this time, for increased sensitivity to infants and children to sodium 1,4-dialkyl sulfosuccinates when used as inert ingredients in pesticide formulations applied to growing crops and a safety factor analysis has not been used to assess risk. For the same reason, EPA has determined that an additional safety factor is not needed to protect the safety of infants and children.

E. Aggregate Risks and Determination of Safety

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert ingredient in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Since an endpoint for risk assessment was not identified, a quantitative dietary risk assessment for sodium 1,4-dialkyl sulfosuccinates was not conducted. Given the lack of concern for hazard posed by SDSS, EPA concludes that there are no dietary risks of concern as a result of exposure to SDSS in food and water. Similarly, based on the lack of concern for hazard posed by the SDSS inert ingredients, the Agency concludes that there are no non-dietary/non-occupational (residential) risks of concern for these inert ingredients. The Agency has not identified any concerns for carcinogenicity relating to sodium 1,4-dialkyl sulfosuccinates.

Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to residues of sodium 1,4-dialkyl sulfosuccinates.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

The Agency is not aware of any country requiring a tolerance for sodium 1,4-dialkyl sulfosuccinates nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

VI. Conclusion

Therefore, an exemption from the requirement of a tolerance is established for residues of sodium 1,4-dialkyl sulfosuccinates when used inert ingredients in pesticide formulations applied to growing crops or to animals.

VII. Statutory and Executive Order Reviews

This final rule establishes exemptions from the requirement of a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the exemptions in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments,

on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 25, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.920, the table is amended by adding alphabetically the following inert ingredients to read as follows:

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert Ingredients	Limits	Uses
* * *	* *	* *
Sodium 1,4-dihexyl sulfosuccinate (CAS Reg. No. 3006–15–3).	.....	Surfactants, related adjuvants of surfactants
* * *	* *	* *
Sodium 1,4-diisobutyl sulfosuccinate (CAS Reg. No. 127–39–9).	.....	Surfactants, related adjuvants of surfactants
* * *	* *	* *
Sodium 1,4-dipentyl sulfosuccinate (CAS Reg. No. 922–80–5).	.....	Surfactants, related adjuvants of surfactants
* * *	* *	* *

* * * * *

[FR Doc. E9–16086 Filed 7–7–09; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0140; FRL–8417–4]

d-Phenothrin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of the insecticide d-phenothrin [(3-phenoxyphenyl)methyl] 2,2-Dimethyl-3-(2-methyl-1-propenyl)cyclopropanecarboxylate in or on all food/feed crops at 0.01 parts per million (ppm) following wide-area mosquito adulticide applications. McLaughlin Gormley King Company requested these tolerances under the Federal Food, Drug and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 8, 2009. Objections and requests for hearings must be received on or before September 8, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0140. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Room S–4400, One Potomac Yard (South Building), 2777 S. Crystal Dr., Arlington, VA 22202–4501. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Carmen Rodia, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; telephone number: (703) 306–0327; fax number: (703) 308–0029; e-mail address: *rodia.carmen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected entities may include, but are not limited to, those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0140 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before September 8, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2008–0140, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Room S–4400, One Potomac Yard (South Building), 2777 S. Crystal Dr., Arlington, VA 22202–4501. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of September 28, 2007 (72 FR 55204) (FRL–8147–1) (EPA–HQ–OPP–2007–0880), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7F7251) by McLaughlin Gormley King Company, 8810 Tenth Avenue, North, Minneapolis, MN 55427–4319.

The petition requested that 40 CFR part 180 be amended by establishing permanent tolerances for residues of the insecticide d-phenothrin, [(3-phenoxyphenyl)methyl] 2,2-Dimethyl-3-(2-methyl-1-propenyl)cyclopropanecarboxylate), in or on all food/feed crops at 0.01 ppm following wide-area mosquito adulticide applications. That notice referenced a summary of the petition prepared by McLaughlin Gormley King Company, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of the insecticide d-phenothrin in or on all food/feed crops at 0.01 ppm following wide-area mosquito adulticide treatments. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

d-Phenothrin has low acute toxicity via the oral, dermal and inhalation routes of exposure, is only a mild eye irritant, is non-irritating to the dermis and tests negative for skin sensitization. The effects on the liver are the most systemically sensitive endpoint following repeated oral exposure based on acceptable subchronic and chronic toxicity studies in rodents and dogs, specifically, increased liver weight, hepatocellular vacuolization and hypertrophy and, at higher doses, increased liver serum enzymes. Based on a 90–day inhalation study in rats, the most sensitive effects from repeated inhalation exposure are portal of entry effects (histopathological changes in the nasal turbinates in both sexes). This inhalation study also indicated histological effects on the liver, thyroid and adrenal which are of borderline toxicological significance alone, but which are supported in part by the increased organ weights and histological findings of similar occurrence in some oral studies. d-Phenothrin was not associated with any systemic toxicity up to the limit dose of 1,000 mg/kg/day in a 3–week dermal toxicity study in rats.

Currently, d-phenothrin is lacking acceptable neurotoxicity studies and these studies are considered data gaps. The only available, but unacceptable/non-guideline, neurotoxicity study in

rats indicated piloerection in animals administered at 5,000 mg/kg for 5 consecutive days; however, the rabbit developmental study provides evidence of neurotoxicity. Indications of neurotoxicity from the rabbit developmental study include presence of spina bifida at the mid-dose of 100 mg/kg/day, microphthalmia at 300 mg/kg/day and hydrocephaly at the high-dose of 500 mg/kg/day. While these neurodevelopmental effects were seen in only a single fetus each, the observations of spina bifida and microphthalmia can be considered significant because they are uncommon in untreated rabbits, yet they occurred together in the d-phenothrin rabbit development study.

As noted, developmental effects were observed in the rabbit developmental study. Minimal adverse effects were observed at the highest dose treated in the rat developmental study. In two acceptable rat reproduction studies, both systemic and reproductive/offspring toxicity occurred at the same doses with similar effects for offspring and dams in each study (organ weight changes in the 1986 study and decreased body weight gain in the 1995 study).

Endocrine-related effects were observed in tests which indicated potential estrogen, androgen and/or thyroid-mediated toxicity. d-Phenothrin produced adrenal cortex vacuolation in the 1–year dog feeding study and 90–day inhalation toxicity study in rats. In addition, the 90–day inhalation toxicity study also resulted in follicular thyroid cell enlargement. Hepatocellular enlargement was produced in the 26–week dog feeding study, the 1–year dog feeding study and the 90–day inhalation study, but was not always associated with thyroid toxicity in these studies at the doses tested. The endpoints selected for chronic dietary, incidental oral and inhalation exposure are protective of endocrine-related effects.

d-Phenothrin has been classified as ''Not Likely to be Carcinogenic to Humans.'' Rat liver tumors, namely hepatocellular carcinomas, occurred only at excessively toxic doses (limit dose) and were; therefore, discounted and mouse liver hepatocellular adenomas, which are common, did not achieve statistical significance ($p < 0.01$). In addition, an acceptable battery of mutagenicity studies was negative for mutagenic potential.

More detailed information on the studies received and the nature of the adverse effects caused by d-phenothrin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found in the document entitled, ''d-Phenothrin (Sumithrin®) Risk Assessment for Reregistration Eligibility Decision (RED) and Associated Section 3 Registration Action,'' dated July 2, 2008, by going to *http://www.regulations.gov*. The referenced document is available in the docket established by this action, which is described under **ADDRESSES**, and is identified as EPA–HQ–OPP–2008–0140–0024 in that docket. Locate and click on the hyperlink for docket ID number EPA–HQ–OPP–2008–0140. Double-click on the document to view the referenced information on pages 50–54 of 66.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the NOAEL in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the LOAEL or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-term, intermediate-term and chronic-term risks are evaluated by comparing food, water and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for d-phenothrin used for human risk assessment can be found in the document entitled, ''d-Phenothrin (Sumithrin®) Risk Assessment for Reregistration Eligibility Decision (RED) and Associated Section 3 Registration Action,'' dated July 2, 2008, by going to *http://www.regulations.gov*. The referenced document is available in the docket established by this action, which is described under ADDRESSES, and is identified as EPA–HQ–OPP–2008–0140–0024 in that docket. Locate and click on the hyperlink for docket ID number EPA–HQ–OPP–2008–0140. Double-click on the document to view the referenced information on pages 23–24 of 66.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to d-phenothrin, EPA considered exposure under the petitioned-for tolerances and assessed dietary exposures from d-phenothrin in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. In estimating acute dietary exposure, EPA conducted a screening level acute dietary and drinking water exposure assessment for the proposed new food use of d-phenothrin for all commodities and incorporated the Agency's estimated surface water peak concentration of 1 part per billion (ppb). An acute dietary exposure analysis was performed for the population subgroup females 13–49 years old only as no acute endpoint was identified for the remaining population subgroups. The acute dietary assessment assumed tolerance-level residues in plant and livestock commodities and 100 pecent crop treated (PCT).

ii. *Chronic exposure*. In estimating chronic dietary exposure, EPA conducted a screening level chronic dietary and drinking water exposure assessment for the proposed new food use of d-phenothrin and incorporated the Agency's chronic or estimated surface water concentration of 0.0407 ppb. The assessment assumed tolerance-level residues in plant and livestock commodities and 100 PCT.

iii. *Cancer*. As explained in Unit III.A., d-phenothrin is considered to be ''Not Likely to be Carcinogenic to Humans.'' As a result, an exposure assessment to evaluate cancer risk is not needed for d-phenothrin.

iv. *Anticipated residue and PCT information*. EPA did not use anticipated residue information in the

dietary exposure assessment for d-phenothrin.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for d-phenothrin in drinking water. These simulation models take into account data on the physical, chemical and fate/transport characteristics of d-phenothrin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of d-phenothrin for acute exposures are estimated to be 0.1002 ppb for surface water and 0.00600 ppb for ground water. Chronic exposures for non-cancer assessments are estimated to be 0.0407 ppb for surface water and 0.00600 ppb for ground water. Chronic exposures for cancer assessments are estimated to be 0.0369 ppb for surface water and 0.00600 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the estimated surface water peak concentration value of 1 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the chronic or estimated surface water concentration value of 0.0407 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides and flea and tick control on pets). Based on a review of active labels and proposed new uses, 12 residential exposure scenarios have been assessed for d-phenothrin. Inhalation and incidental ingestion exposure assessments have been conducted for the residential scenarios. Short-term and intermediate-term exposures are expected and assessed for residential handler and post-application exposure scenarios based on use and expected exposure patterns.

Risk assessments were conducted for residential exposure pathways based on registered uses. Residential post-application exposure and risk to d-phenothrin was assessed using both deterministic and probabilistic modeling approaches.

The residential exposure assessment includes 2 handler and 10 post-application residential exposure scenarios. The term ''handler'' applies to individuals who mix, load and apply the pesticide product. The term ''post-application'' describes individuals who are exposed to pesticides after entering areas previously treated with pesticides. d-Phenothrin products for outdoor residential use are almost exclusively available as aerosol sprays. There are a small number of outdoor fogger products containing d-phenothrin (at least one); however, due to the absence of scenario-specific exposure data for outdoor foggers, the fact that there are very few fogger products for residential outdoor use and the fact that assessment of aerosol sprays and mosquito ultra low volume (ULV) applications are likely to address risks from foggers, residential use of outdoor foggers was not assessed separately for this analysis.

EPA assessed residential exposure using the following assumptions: Primary assumptions for assessing post-application exposure to use of foggers and aerosols in indoor residential settings were based on data provided by the Non-Dietary Exposure Task Force (NDETF). The NDETF was formed in 1996 by members of the Pyrethrin Joint Venture and Piperonyl Butoxide Task Force II to respond to reregistration needs and to produce scientifically sound data on non-dietary exposures to pyrethrins, the pyrethroids, piperonyl butoxide and MGK® 264 insecticide synergist.

EPA used the AGricultural DISPersal model (AGDISP), version 8.15.0.4, to calculate airborne concentrations of d-phenothrin from aerial ULV mosquito abatement spray applications. ULV sprayers disperse very fine aerosol droplets that stay aloft and kill flying mosquitoes on contact. ULV applications involve small quantities of the insecticide formulation in relation to the size of the area treated, typically less than 3 ounces per acre. AGDISP provides estimates of the 1–hour average concentration and the downwind deposition of spray material released from the aircraft equipment and predicts the motion of spray material released, including the mean position of the material and the position variance about the mean as a result of turbulent fluctuations, providing a prediction of spray drift.

For the AGDISP modeling for d-phenothrin, label recommendations were followed, but conservative assumptions were made. The resultant data were used to assess inhalation exposure resulting from aerial application of d-phenothrin as a mosquito adulticide. Deposition data from the AGDISP model were not used to assess post-application incidental oral exposure to d-phenothrin because residential application of d-phenothrin products outdoors to patios and lawn areas results in higher deposition. Therefore, post-application incidental oral exposures were assessed using estimated deposition from homeowner application of outdoor house and garden spray products.

Air concentrations from truck-mounted ULV spray applications are estimated based on the SOP for residential exposure assessment for inhalation exposure from use of an outdoor space spray for pest control. The approach was modified to assume that 1% of the highest application rate for a truck-mounted ULV sprayer is available in the breathing zone of the resident. It is assumed that the full application rates for a truck-mounted ULV sprayer (with a 1% dilution factor) is available in the breathing zone of the residential bystander, i.e., an application rate expressed as lbs. a.i./ft^2 is converted into a concentration expressed in a per cubic foot (ft^3) basis.

Scenario-specific data on pyrethrins and/or permethrin from the NDETF studies were used to determine deposition of d-phenothrin on vinyl and carpet flooring following use of a total release indoor fogger. Given the close structural similarity of pyrethrins, permethrin and d-phenothrin and the similarity of use patterns for these chemicals, EPA believes that the NDETF pyrethrins and/or permethrin data provide appropriate surrogate data for d-phenothrin. Permethrin data were used preferentially for this assessment, if available, since permethrin and d-phenothrin are both synthetic pyrethroids.

Inhalation following application of an indoor total release fogger was not modeled separately because the aerosol spray application scenario is likely to provide a more conservative exposure estimate and; therefore, be protective of exposures following use of a total release fogger. While application rates for total release foggers and aerosol sprays are comparable, labels for use of total release foggers require that the room be closed and vacated during release of the fogger and that the room be opened and thoroughly ventilated for a period of time (e.g. 30 minutes, 1 hour) prior to re-entry.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify or revoke a tolerance, the Agency consider

''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

d-Phenothrin is a member of the pyrethroid class of pesticides. Although all pyrethroids alter nerve function by modifying the normal biochemistry and physiology of nerve membrane sodium channels, EPA is not currently following a cumulative risk approach based on a common mechanism of toxicity for the pyrethroids. Although all pyrethroids interact with sodium channels, there are multiple types of sodium channels and it is currently unknown whether the pyrethroids have similar effects on all channels and there is also no clear understanding of effects on key downstream neuronal function e.g., nerve excitability, and how these key events interact to produce their compound-specific patterns of neurotoxicity. There is ongoing research by the Agency's Office of Research and Development and pyrethroid registrants to evaluate the differential biochemical and physiological actions of pyrethroids in mammals. When available, EPA will consider this research and make a determination of common mechanism as a basis for assessing cumulative risk. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10x) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10x, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. d-Phenothrin demonstrated qualitative and quantitative susceptibility in an acceptable rabbit developmental study. Specifically, developmental toxicity (spina bifida) occurred at a lower LOAEL (100 mg/kg/day) than the maternal LOAEL (300 mg/kg/day) for decreased body weight gain and food consumption. In rats, d-phenothrin was developmentally toxic only at a dose of 3,000 mg/kg/day. The NOAELs and LOAELs for maternal animals and fetuses were the same in this study. In the 1986 and 1995 rat reproduction studies, the NOAELs/LOAELs for both maternal and offspring/reproductive findings occurred at the same dose levels (both studies) and the types of offspring effects (organ weight changes (1986) and decreased mean pup weights (1995)) were also present in the respective maternal animals from the two studies.

3. *Conclusion*. The risk assessment and FFDCA safety finding for d-phenothrin are based on a well characterized but incomplete toxicity database. With the retention of the full FQPA SF of 10x, the toxicity database is considered adequate to evaluate the risks to infants and children based on the following findings:

i. The toxicity database for d-phenothrin is incomplete for a full hazard assessment. The toxicity database for d-phenothrin lacks acceptable acute, subchronic and developmental neurotoxicity studies and an immunotoxicity study. There are no indications in the available studies that organs associated with immune function, such as the thymus and spleen, are affected by d-phenothrin. An immunotoxicity study is required, as a new data requirement under the 40 CFR part 158 data requirements for registration of a pesticide (food and non-food uses).

ii. The only available neurotoxicity study in rats is an unacceptable/non-guideline study which demonstrated clinical signs of piloerection but no axonal damage. The rabbit developmental study provides evidence of neurotoxicity. Spina bifida at the mid-dose and treatment-related presence of hydrocephaly, another serious neurodevelopmental effect, was seen at the highest dose tested in the rabbit developmental study. Generally, other specific neurotoxic clinical signs were absent in other acute, subchronic and chronic d-phenothrin studies in rats and dogs; however, d-phenothrin does not display the full spectrum of Type 1 clinical signs in rats and dogs up to the limit dose.

iii. There is qualitative and quantitative evidence of increased susceptibility for d-phenothrin in the rabbit developmental study in the form of spina bifida at doses lower than those causing maternal toxicity. There was no evidence of increased susceptibility in the 2–generation reproduction study in rats. There is low concern for quantitative and qualitative susceptibility observed in the rabbit developmental study because the NOAELs/LOAELs in this study are well characterized and are used to establish the acute Reference Dose (aRfD). The NOAEL (7.1 mg/kg/day) selected for the chronic Reference Dose (cRfD) is lower (14x) than the dose at which developmental effects were observed.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessment utilizes proposed tolerance-level or higher residues and assumes 100 PCT for all commodities. Use of screening level dietary assessments ensures that acute and chronic dietary risks will not be underestimated. The Tier 1 drinking water assessment uses model parameters designed to provide conservative, health protective estimates of water concentrations. Post-application exposure to children was assessed using maximum application rates and established exposure assumptions. Based on standard assumptions, most residential scenarios were not of concern (MOEs > 1,000). For those assessments with MOEs < 1,000, a refined probabilistic analysis was carried out and all scenarios passed (all MOEs > 1,000) at the 99th percentile level.

The FQPA 10x SF is to be retained primarily due to the absence of needed acute, subchronic and developmental neurotoxicity studies in conjunction with a finding of increased sensitivity for a neurological effect in the rabbit developmental study. EPA finds that an additional 10x SF will protect the safety of infants and children because the neurotoxic effects were generally not seen in the d-phenothrin toxicity database and when those effects were seen it was at comparatively high doses.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-term, intermediate-term and chronic-term risks are evaluated by comparing the estimated aggregate food, water and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

The aggregate risk assessment integrates the assessments conducted for dietary/drinking water and residential exposure. Since there is potential for concurrent exposure via the food, water and residential pathways, all routes of d-phenothrin exposure have been considered.

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. Acute dietary exposure analysis was performed for the population subgroup females 13–49 years old only. No adverse effect resulting from a single-oral exposure was identified and no acute dietary endpoint was selected for the general population or other population subgroups. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to d-phenothrin will occupy 1.3% of the aPAD for females 13–49 years old, the population group receiving the greatest exposure.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to d-phenothrin from food and water will utilize 13% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of d-phenothrin is not expected.

3. *Short-term risk*. The short- and itermediate-term aggregate risk is the estimated risk associated with combined risks from average food exposures, average drinking water exposures, incidental oral exposures and inhalation exposures. Exposure from oral and inhalation exposure pathways is not aggregated for d-phenothrin because the toxicity endpoints for these exposure routes are not based on common specific target organ toxicity effects. Aggregate risk from exposure to d-phenothrin residues from food, drinking water and incidental oral exposures do not present risks of concern.

4. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to d-phenothrin residues.

For more detailed information on non-dietary (residential) exposure, including the use of the AGDISP and CARES models and the NDETF data as part of assessing residential exposure to d-phenothrin, please refer to the document entitled, ''d-Phenothrin (Sumithrin®) Risk Assessment for Reregistration Eligibility Decision (RED) and Associated Section 3 Registration Action,'' dated July 2, 2008, by going to *http://www.regulations.gov*. The referenced document is available in the docket established by this action, which is described under **ADDRESSES**, and is identified as EPA–HQ–OPP–2008–0140–0024 in that docket. Locate and click on the hyperlink for docket ID number EPA–HQ–OPP–2008–0140. Double-click on the document to view the referenced information on pages 31–42 of 66.

In addition, for more detailed information on the refinements incorporated as part of the probabilistic assessment of d-phenothrin, please refer to the document entitled, ''d-Phenothrin (Sumithrin®): Addendum to Residential Exposure Assessment,'' dated August 19, 2008, by going to *http://www.regulations.gov*. The referenced document is available in the docket established by this action, which is described under **ADDRESSES**, and is identified as EPA–HQ–OPP–2008–0140–0029 in that docket. Locate and click on the hyperlink for docket ID number EPA–HQ–OPP–2008–0140. Double-click on the document to view the referenced information.

IV. Other Considerations

A. Analytical Enforcement Methodology

No multiresidue monitoring protocol data were submitted by the registrant for d-phenothrin. No analytical method was recommended by the registrant for enforcement. However, the United States Food and Drug Administration (FDA) has tested d-phenothrin through their multiresidue protocols. d-Phenothrin is completely recovered through protocol 302, but only 60% remains after florisil cleanup, which is rarely used any more. No additional data are needed from the registrant.

Adequate enforcement methodology is available to enforce the tolerance expression. FDA's Pacific Regional Laboratory Northwest has developed a gas chromatography/mass spectrometry detection (GC/MSD) method that recovers d-phenothrin. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no established CODEX, Canadian or Mexican maximum residue limits (MRLs) for residues of the insecticide d-phenothrin in or on all food/feed crops following wide-area mosquito adulticide applications.

V. Conclusion

Therefore, tolerances are established for residues of the insecticide d-phenothrin ([(3-phenoxyphenyl)methyl] 2,2-Dimethyl-3-(2-methyl-1-propenyl)cyclopropanecarboxylate).

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined

that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 19, 2009.

Steven Bradbury,

Acting Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.647 is added to read as follows:

§ 180.647 d-Phenothrin; tolerances for residues.

(a) *General.* A tolerance of 0.01 parts per million is established for residues of the insecticide d-phenothrin in or on all food/feed crops following wide-area mosquito adulticide applications.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. E9–15937 Filed 7–7–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0478; FRL–8423–6]

Pyrimethanil; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation replaces existing tolerances for residues of pyrimethanil on fruit, citrus, group 10 postharvest; and fruit, stone, group 12, except cherry with tolerances for residues of pyrimethanil in or on fruit, citrus, group 10, except lemon, postharvest; fruit, stone, group 12; and lemon, preharvest and postharvest. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 8, 2009. Objections and requests for hearings must be received on or before September 8, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0478. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; e-mail address: *stanton.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm.*

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those

objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0478 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before September 8, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2008–0478, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of July 9, 2008 (73 FR 39289) (FRL–8371–2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E7353) by IR-4, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.518 be amended by establishing tolerances for residues of the fungicide pyrimethanil, 4,6-dimethyl-*N*-phenyl-2-pyrimidinamine, in or on fruit, citrus, (except lemon), group 10 (postharvest) at 10 parts per million (ppm); lemon at 11 ppm; and fruit, stone, group 12 at 10 ppm; and removing existing tolerances for residues of pyrimethanil on fruit, citrus, group 10 postharvest at 10 ppm; and fruit stone, group 12, except cherry at 3.0 ppm. That notice referenced a summary of the petition prepared by Bayer CropScience, the registrant, on behalf of IR-4, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has made minor changes to the citrus commodity definitions. The reason for these changes is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of pyrimethanil on fruit, citrus, group 10, except lemon, postharvest at 11 ppm; fruit, stone, group 12 at 10 ppm; and lemon, preharvest and postharvest at 11 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Pyrimethanil is of low acute toxicity by the oral, inhalation, and dermal routes of exposure. It is slightly irritating to the eyes and non-irritating to the skin in rabbit studies. Pyrimethanil is not a dermal sensitizer. Subchronic and chronic repeated oral toxicity studies in rats, mice, and dogs primarily resulted in decreased body weight and body-weight gains, often accompanied by decreased food consumption. The major target organs in rats and mice were the liver and thyroid. In subchronic studies in rats and mice, liver toxicity was manifested as increased absolute and relative liver weights. Histopathological changes in the liver were primarily associated with increased evidence of hypertrophy in centrilobular hepatocytes. In a subchronic toxicity study in mice, increases in absolute thyroid weight were observed, associated with exfoliative necrosis and pigmentation of follicular cells. In a subchronic toxicity study in rats, thyroid effects were manifested as an increased incidence and severity of follicular epithelial hypertrophy and follicular epithelial brown pigment.

EPA classified pyrimethanil as a Group C (possible human) carcinogen, based on an increased incidence of thyroid follicular cell tumors observed in the chronic/carcinogenicity study in rats. There was no evidence of carcinogenicity in mice; however, the dosing in this study was not considered to be adequate to assess the potential carcinogenicity. Therefore, EPA is requesting a repeat of the mouse carcinogenicity study. Based on the presence of thyroid tumors in rats, EPA has determined that a margin of exposure (MOE) approach is appropriate for quantification of risk. This determination is based on evidence that pyrimethanil appears to induce thyroid tumors through a disruption in the thyroid-pituitary status and thus may have a threshold for tumor development. This decision was supported by the weight of the evidence, considering the neoplastic, related nonneoplastic and/or hormonal effects in the male rat thyroid and liver. A point of departure (POD) of 17 milligrams/kilograms/day (mg/kg/day), based on the thyroid precursor lesions is used for establishing the chronic population adjusted dose (cPAD) for pyrimethanil. The cPAD will be protective of any potential cancer and non-cancer effects from exposure to pyrimethanil. At this time, there is less concern for the lack of a repeat mouse carcinogenicity study, since no toxicologically significant effects were

noted up to the highest dose tested (HDT) (254 mg/kg/day) in the existing mouse study, and the new study will be tested at higher doses. Consequently EPA does not believe that the new study will yield a POD lower than the current POD (17 mg/kg/day) used for risk assessment.

Signs of potential neurotoxicity (ataxia, decreased motor activity, decreased body temperature, decreased hind limb grip strength in males, and dilated pupils in females) were observed at the HDT (1,000 mg/kg/day) in the acute neurotoxicity study in rats. No signs of neurotoxicity were evident at doses up to 392 mg/kg/day in the subchronic neurotoxicity study in rats; and there was no evidence of neuropathology in either the acute or subchronic neurotoxicity study or in any of the subchronic and chronic toxicity studies in mice, rats and dogs.

There was no quantitative or qualitative evidence of increased susceptibility of fetuses in the developmental toxicity studies in rats and rabbits or of offspring in the 2–generation reproduction toxicity study in rats. In the rat developmental toxicity study, maternal effects (decreased body weight and weight gain) and fetal effects (decreases in mean litter weight and mean fetal weight) were observed at the same dose. Similarly, in the rabbit developmental toxicity study, fetal effects (decreased body weight, weight gain, food consumption, and production and size of fecal pellets; increase in fetal runts; retarded ossification; 13 thoracic vertebrae and pairs of ribs; and deaths) occurred at a dose that produced similar maternal toxicity (decreased body weight, weight gain, food consumption, and production and size of fecal pellets, and deaths). There were no effects on fertility or reproduction in the 2–generation reproduction study in rats. In this study, adverse effects (decreased body weight/weight gain) also occurred at the same dose in parental animals and pups.

Specific information on the studies received and the nature of the adverse effects caused by pyrimethanil as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document *Pyrimethanil Human-Health Risk Assessment for Proposed Uses on Stone Fruits and Citrus Fruits*, page 39 in docket ID number EPA–HQ–OPP–2008–0478.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological POD is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a benchmark dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and cPAD. The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the level of concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for pyrimethanil used for human risk assessment can be found at *http://www.regulations.gov* in the document *Pyrimethanil Human-Health Risk Assessment for Proposed Uses on Stone Fruits and Citrus Fruits*, page 20 in docket ID number EPA–HQ–OPP–2008–0478.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to pyrimethanil, EPA considered exposure under the petitioned-for tolerances as well as all existing pyrimethanil tolerances in 40 CFR 180.518. EPA assessed dietary exposures from pyrimethanil in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. EPA identified such effects for the general population (decreased motor activity, ataxia, decreased body temperature, hind limb grip strength, and dilated pupils observed in the acute neurotoxicity study) and for females 13 to 49 years old (increase in fetuses with 13 thoracic vertebrae and 13 pairs of ribs observed in the rabbit developmental toxicity study that are presumed to occur after a single exposure). The aPAD for the general population has been established at 1 mg/kg/day; whereas, the aPAD for females 13 to 49 years old is lower (0.45 mg/kg/day) due to the more sensitive endpoint on which it is based.

In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed that pyrimethanil residues are present in all commodities at tolerance levels and that 100% of all crops are treated.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed that pyrimethanil residues are present in all commodities at tolerance levels and that 100% of all crops are treated.

iii. *Cancer*. EPA classified pyrimethanil as a Group C (possible human) carcinogen but determined that the chronic dietary risk assessment based on the cPAD would be protective of any potential cancer effects. Therefore, a separate exposure assessment to evaluate cancer risk is unnecessary. The weight of the evidence supporting this determination is discussed in unit III.A.

iv. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residue or PCT information in the dietary assessment for pyrimethanil. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for pyrimethanil in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of pyrimethanil. Further information regarding EPA drinking water models

used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of pyrimethanil for acute exposures are estimated to be 37.8 parts per billion (ppb) for surface water and 4.8 ppb for ground water. EDWCs of pyrimethanil for chronic exposures for non-cancer assessments are estimated to be 5.1 ppb for surface water and 4.8 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 37.8 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 5.1 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Pyrimethanil is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found pyrimethanil to share a common mechanism of toxicity with any other substances, and pyrimethanil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that pyrimethanil does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act of 1996 (FQPA) safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The prenatal and postnatal toxicology database for pyrimethanil includes rat and rabbit developmental toxicity studies and a 2–generation reproduction toxicity study in rats. As discussed in unit III.A., there was no evidence of increased quantitative or qualitative susceptibility of fetuses or offspring following exposure to pyrimethanil in these studies.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for pyrimethanil is adequate to assess the prenatal and postnatal toxicity of pyrimethanil. In accordance with 40 CFR part 158's toxicological data requirements, an immunotoxicity testing study (OPPTS Guideline 870.7800) is required for pyrimethanil. The evidence for immunotoxicity in the existing database is limited to a slight decrease in thymus weight observed at the HDT (529 mg/kg/day) in the subchronic study in rats. There were no corroborative histopathological findings noted in the thymus in this study, and there were no effects on the thymus in the chronic/carcinogenicity study in rats at doses up to and including 221 mg/kg/day or in any other study with pyrimethanil. Since the observed thymus weight increase is an isolated finding, EPA does not believe that conducting immunotoxicity testing will result in a POD lower than the POD already selected for evaluating chronic exposures to pyrimethanil (17 mg/kg/day), and an additional database UF is not needed to account for potential immunotoxicity.

ii. Although there were signs of potential neurotoxicity (ataxia, decreased motor activity, decreased body temperature, decreased hind limb grip strength in males, and dilated pupils in females) observed at the HDT (1,000 mg/kg/day) in the acute neurotoxicity study, there were no signs of neurotoxicity at doses up to 392 mg/kg/day in the subchronic neurotoxicity study; and there was no evidence of neuropathology in either the acute or subchronic neurotoxicity study or in any of the subchronic and chronic toxicity studies in mice, rats and dogs. Based on these findings, EPA has determined that there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that pyrimethanil results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in offspring in the 2–generation reproduction study. There are no residual uncertainties for prenatal and/or postnatal toxicity.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to pyrimethanil in drinking water. Pyrimethanil is not registered for any uses that would result in residential exposures to the pesticide. These assessments will not underestimate the exposure and risks posed by pyrimethanil.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for acute exposure, EPA performed two different acute risk assessments–one focusing on females 13 to 49 years old and designed to protect against prenatal effects and the other focusing on acute effects

relevant to all other population groups. For females 13 to 49 years old, the acute dietary exposure to pyrimethanil from food and water will occupy 13% of the aPAD addressing prenatal effects. As to acute effects other than prenatal effects, the acute dietary exposure to pyrimethanil from food and water will occupy 35% of the aPAD for infants less than 1–year old, the population group with the highest estimated acute dietary exposure to pyrimethanil.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to pyrimethanil from food and water will utilize 63% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. There are no residential uses for pyrimethanil.

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Pyrimethanil is not registered for any use patterns that would result in residential exposure. Therefore, the short-term aggregate risk is the sum of the risk from exposure to pyrimethanil through food and water and will not be greater than the chronic aggregate risk.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Pyrimethanil is not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to pyrimethanil through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population*. The Agency has determined that the chronic risk assessment based on the established cPAD is protective of potential cancer effects from exposure to pyrimethanil. Based on the results of the chronic risk assessment discussed in Unit III.E.2. EPA concludes that pyrimethanil is not expected to pose a cancer risk.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to pyrimethanil residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (High Performance Liquid Chromatography (HPLC)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

Codex maximum residue limits (MRLs) have been established for pyrimethanil *per se* in/on plant commodities associated with this petition, including citrus fruit at 7 ppm (postharvest); cherry (postharvest), peach and nectarine at 4 ppm; apricot at 3 ppm; and plum at 2 ppm. Due to differences in application rates and use patterns, harmonization of U.S. tolerances with the lower Codex MRLs is not possible at this time.

C. Revisions to Petitioned-For Tolerances

IR-4 petitioned for tolerances for residues of pyrimethanil on ''fruit, citrus, (except lemon), group 10, (postharvest)'' and on ''lemon.'' EPA revised the group tolerance to read ''fruit, citrus, group 10, except lemon, postharvest'' to agree with the accepted nomenclature in the Agency's Food and Feed Vocabulary Database. The tolerance for lemon was revised to read ''lemon, preharvest and postharvest'' to comply with the regulation at 40 CFR 180.1(h), which requires EPA to specify those tolerances intended to cover postharvest use of a pesticide.

V. Conclusion

Therefore, tolerances are established for residues of pyrimethanil, 4,6-dimethyl-*N*-phenyl-2-pyrimidinamine, in or on fruit, citrus, group 10, except lemon, postharvest at 10 ppm; fruit, stone, group 12 at 10 ppm; and lemon, preharvest and postharvest at 11 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the

agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 26, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. The table in paragraph (a)(1) of § 180.518 is amended by removing the commodities ''Fruit, citrus, group 10 postharvest'' and ''Fruit, stone, group 12, except cherry'' and alphabetically adding the following commodities to read as follows:

§ 180.518 Pyrimethanil; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
* * * *	*
Fruit, citrus, group 10, except lemon, postharvest	10
* * * *	*
Fruit, stone, group 12	10
* * * *	*
Lemon, preharvest and postharvest	11
* * * *	*

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[FR Doc. E9–15942 Filed 7–7–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0731; FRL–8423–5]

Cyazofamid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of cyazofamid and its metabolite, CCIM, expressed as cyazofamid in or on fruiting vegetable group 8 and okra. Additionally, it establishes a tolerance with regional restrictions in or on grape. Finally, this regulation removes the established grape import and tomato tolerances, as a regional tolerance on grape and fruiting vegetable group tolerance replaces them, respectively. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 8, 2009. Objections and requests for hearings must be received on or before September 8, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0731. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7390; e-mail address: *nollen.laura@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must

identify docket ID number EPA–HQ–OPP–2008–0731 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before September 8, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2008–0731, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of December 3, 2008 (73 FR 73644) (FRL–8386–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E7427) by IR-4, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.601 be amended by establishing tolerances for combined residues of the fungicide cyazofamid, 4-chloro-2-cyano- *N*,*N* -dimethyl-5-(4-methylphenyl)-1*H*-imidazole-1-sulfonamide, and its metabolite CCIM, 4-chloro-5-(4-methylphenyl)-1*H*-imidazole-2-carbonitrile, expressed as cyazofamid, in or on fruiting vegetable group 8 and okra at 0.80 parts per million (ppm); and be further amended by establishing a tolerance with regional restrictions in or on grape at 1.5 ppm. Since data were submitted that only supports the use of cyazofamid on grapes grown east of the Rocky Mountains, the proposed tolerance for grape will be restricted to a regional tolerance under paragraph (c) of § 180.601. This petition additionally requested the removal of the currently established grape import and tomato tolerances. That notice referenced a summary of the petition prepared on behalf of IR-4 by ISK Biosciences Corporation, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified some of the proposed tolerances. The reason for these changes is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for combined residues of cyazofamid and its metabolite CCIM, expressed as cyazofamid, on fruiting vegetable, group 8 and okra at 0.40 ppm and grape at 1.5 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Cyazofamid has a low order of acute toxicity via the oral, dermal, and inhalation routes of exposure. It produces minimal but reversible eye irritation, is a slight dermal irritant and is a weak dermal sensitizer. In subchronic toxicity studies in rats cyazofamid exhibited mild or low toxicity with the kidney being the primary target organ. Kidney effects included an increased number of ''basophilic kidney tubules'' and mild increases in urinary volume, pH, and protein. No adverse kidney effects or any other toxicity findings were noted in chronic toxicity studies in rats. Similarly, the overall toxicity profile in dogs is unremarkable. In both the 13 week and 1–year dog studies, there were no major toxicity findings up to a dose of 1,000 milligrams/kilograms/day (mg/kg/day). The only possible effect was increased cysts in parathyroids and the pituitary (females only) observed in the high-dose groups of the 1–year study.

Skin lesions, which may be due to systemic allergy, were observed in the males of the 18 month mouse carcinogenicity study. At the high dose, approaching 1,000 mg/kg/day, male mice suffered hair loss due to scratching, which was confirmed at necropsy by increased incidence of body sores (head, neck, trunk, limb, and/or tail) and was correlated histologically with an increased incidence of acanthosis (hyperplasia), chronic active dermatitis, ulceration, and premature death. The sulfonamide moiety in the cyanoimidazole ring might have rendered cyazofamid an allergen, albeit a weak one. This is supported by the findings that cyazofamid is a moderate irritant in the primary rabbit skin test and is a positive weak sensitizer in the guinea pig skin maximization test. There were no skin allergies in the rat feeding study, which may be due possible species variation.

There were no maternal or developmental effects observed in the prenatal developmental toxicity study in rabbits and no maternal, reproductive or offspring effects in the 2–generation reproduction study in rats. There was some evidence of increased susceptibility following *in utero* exposure of rats in the prenatal developmental toxicity study. At the highest dose tested (HDT) (1,000 mg/kg/day), developmental effects (increased incidence of bent ribs) were observed in the absence of maternal toxicity.

There were no indications of treatment-related adverse neurotoxicity

findings. In the acute neurotoxicity study, there were no clinical signs indicating potential neurotoxic effects, no qualitative or quantitative neurobehavioral effects, no changes in brain weight, and no evidence of gross or microscopic pathology. There was no evidence of neurotoxicity in other available studies for cyazofamid as well.

There was no evidence of carcinogenicity in the rat and mouse carcinogenicity studies and no evidence that cyazofamid is mutagenic in several *in vivo* and *in vitro* studies. Based on the results of these studies, EPA has classified cyazofamid as ''not likely to be carcinogenic to humans.''

Specific information on the studies received and the nature of the adverse effects caused by cyazofamid as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document *Cyazofamid. Human Health Risk Assessment for Proposed Uses on Fruiting Vegetables and Okra, Grapes East of the Rocky Mountains, Vegetable Greenhouse Transplants, and Commercial Application on Residential Turf and Residential Ornamentals*, pages 47–52 in docket ID number EPA–HQ–OPP–2008–0731.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a benchmark dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the level of concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for cyazofamid used for human risk assessment can be found at *http://www.regulations.gov* in document *Cyazofamid. Human Health Risk Assessment for Proposed Uses on Fruiting Vegetables and Okra, Grapes East of the Rocky Mountains, Vegetable Greenhouse Transplants, and Commercial Application on Residential Turf and Residential Ornamentals*, pages 15–16 in docket ID number EPA–HQ–OPP–2008–0731.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to cyazofamid, EPA considered exposure under the petitioned-for tolerances as well as all existing cyazofamid tolerances in 40 CFR 180.601. EPA assessed dietary exposures from cyazofamid in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. EPA identified such an effect (increased incidence of bent ribs in the rat prenatal developmental toxicity study) for the population subgroup, females 13 to 49 years old; however, no such effect was identified for the general population, including infants and children.

In estimating acute dietary exposure for females 13–49 years old, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed tolerance-level residues, Dietary Exposure Evaulation Model (DEEM) default processing factors and 100 percent crop treated (PCT) for all existing and new uses of cyazofamid.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed tolerance-level residues, DEEM default processing factors, and 100 PCT for all commodities.

iii. *Cancer*. Based on the absence of significant tumor increases in two adequate rodent carcinogenicity studies, EPA has classified cyazofamid as ''not likely to be carcinogenic to humans;'' therefore, a quantitative exposure assessment to evaluate cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residue and/or PCT information in the dietary assessment for cyazofamid. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for cyazofamid in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of cyazofamid. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Available environmental fate studies suggest cyazofamid is not very mobile and quickly degrades into a number of degradation products under different environmental conditions. Among the three major degradates for cyazofamid (CCIM, CCIM-AM, and CTCA), the two terminal degradates are CCIM and CTCA. The highest estimated drinking water concentrations resulted from modeling which assumed application of 100% molar conversion of the parent into the terminal degradate CTCA. EPA used these estimates of CTCA in its dietary exposure assessments, a conservative approach that likely overestimates the exposure contribution from drinking water. Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) model for surface water and the Screening Concentration in Ground Water (SCI-GROW) model for ground water, the estimated drinking water concentrations (EDWCs) of CTCA for acute exposures are estimated to be 136 parts per billion (ppb) for surface water and 2.18 ppb for ground water. Chronic exposures for non-cancer assessments are estimated to be 133 ppb for surface water and 2.18 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered

into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 136 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 133 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Cyazofamid is currently registered for use on professionally managed turf areas, such as golf courses and college/professional sports fields and proposed for use on residential lawns and ornamentals. For the registered uses, short- and intermediate-term postapplication dermal exposure was previously assessed for adult and young golfers and adult athletes, and is not of concern to the EPA. Because it is unlikely for an individual to experience a co-occurrence of activities within a single day, the two scenarios of golfing or using recreational fields were not aggregated with the proposed residential lawn postapplication scenario.

For the proposed use of cyazofamid on residential lawns and ornamentals, application by homeowners to residential turf is prohibited. Therefore, non-occupational (i.e., residential) handler exposure for residential lawns and ornamentals is not expected and was not assessed. A turf transferrable residue (TTR) study, which was submitted for use in assessing postapplication activities, was useful in determining residue dissipation. Short- and intermediate-term postapplication exposure is possible for adults and children in contact with residential lawns and ornamentals after application of cyazofamid. EPA determined there is no significant incidental oral exposure for adults; therefore, only dermal exposure from contact with treated turf and ornamentals was appropriate to analyze for short- and intermediate-term risk for adults. The adult population of concern for dermal risk assessment is females of childbearing age (13+) based on the developmental toxicity findings of increased incidence of bent ribs; thus, the estimated risk for this population is protective of all adult population subgroups. For children, postapplication exposure to treated residential turf was estimated for hand-to-mouth activity, object-to-mouth activity, and soil ingestion. No point of departure was identified for dermal exposures to treated turf for children, since no toxicity was seen in the 28–day dermal toxicity study at the HDT (1,000 mg/kg/day); therefore, dermal exposure scenarios for children were not assessed. The estimated exposure is believed to be a reasonable high-end estimate based on observations from chemical-specific studies and professional judgment.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found cyazofamid to share a common mechanism of toxicity with any other substances, and cyazofamid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that cyazofamid does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act of 1996 (FQPA) safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The prenatal and postnatal toxicology database for cyazofamid includes rat and rabbit developmental toxicity studies and a 2–generation reproduction toxicity study in rats. The toxicology data for cyazofamid provides no indication of increased susceptibility, as compared to adults, of rabbit fetuses to *in utero* exposure in a developmental study or of rats in the 2–generation reproduction study. There is evidence of increased quantitative susceptibility following *in utero* exposure to rats in the prenatal developmental study; an increased incidence of bent ribs in fetuses at the HDT was noted in the absence of maternal effects. However, the Agency determined that concern is low because:

i. The developmental effect is well identified with clear NOAEL/LOAEL.

ii. The developmental effect (increased bent ribs) is a reversible variation rather than a malformation.

iii. The developmental effect is seen only at the limit dose of 1,000 mg/kg/day.

iv. This endpoint is used to establish the acute reference dose for females 13–49.

v. The overall toxicity profile indicates that cyazofamid is not a very toxic compound.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for cyazofamid is complete, except for immunotoxicity and subchronic neurotoxicity testing. 40 CFR part 158 makes immunotoxicity testing (OPPTS Guideline 870.7800) and subchronic neurotoxicity testing (OPPTS Guideline 158.500) required for pesticide registration; however, the available data for cyazofamid do not show potential for immunotoxicity. Further, there is no evidence of neurotoxicity in any study in the toxicity database for cyazofamid. EPA does not believe that conducting neurotoxicity and immunotoxicity testing will result in a NOAEL lower than the regulatory dose for risk assessment. Consequently, EPA believes the existing data are sufficient for endpoint selection for exposure/risk assessment scenarios and for evaluation of the requirements under FQPA, and an additional database UF does not need to be applied.

ii. There is no indication that cyazofamid is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that cyazofamid results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study. Although there is evidence of increased quantitative susceptibility in the prenatal developmental study in rats, the Agency did not identify any residual uncertainties after establishing toxicity

endpoints and traditional UFs to be used in the risk assessment of cyazofamid. Therefore, there are no residual concerns regarding developmental effects in the young.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to cyazofamid in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by cyazofamid.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to cyazofamid will occupy <1% of the aPAD for females 13–49 years old, the population group of concern for acute effects. Cyazofamid is not expected to pose an acute risk to the general population, including infants and children.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to cyazofamid from food and water will utilize 1% of the cPAD for infants less than 1 year old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of cyazofamid is not expected.

3. *Short- and intermediate-term risk*. Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Cyazofamid is currently proposed for uses that could result in short- and intermediate-term postapplication residential exposure to adults and children. The Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short- and intermediate-term residential exposure to cyazofamid.

Using the exposure assumptions described in this unit for short- and intermediate-term exposures, EPA has concluded the combined short- and intermediate-term food, water, and residential exposures (treated residential turf and ornamentals) aggregated result in aggregate MOEs of 1,100 for the general U.S. population and 1,400 for children 1–2 years old. As the aggregate MOEs are greater than 100 for the general U.S. population and children 1–2 years old, short- and intermediate-term aggregate exposure to cyazofamid is not of concern to EPA.

4. *Aggregate cancer risk for U.S. population*. As discussed in unit III.C.1.iii, EPA has classified cyazofamid as ''not likely to be carcinogenic to humans,'' and it is not expected to pose a cancer risk to humans.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to cyazofamid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate analytical methodology is available to enforce the tolerances. Cyazofamid and the metabolite CCIM are completely recovered (>80% recovery) using the Food and Drug Administration's Multi-Residue Protocol D (without cleanup). In addition, an acceptable HPLC/UV method (high performance liquid chromatography method using an ultra violet detector) is available for use as a single analyte confirmatory method. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no maximum residues limits (MRLs) established by Codex or Mexico for cyazofamid. A Canadian MRL has been established for residues of cyazofamid and CCIM at 0.20 ppm for tomatoes. The currently established U.S. MRL for tomato (0.20 ppm) will be replaced by inclusion in fruiting vegetable group 8 (0.40 ppm). At this time, the U.S. fruiting vegetable group tolerance cannot be harmonized with the Canadian tomato MRL because field trial data supporting the group tolerance are higher than 0.20 ppm.

C. Revisions to Petitioned-For Tolerances

Based upon review of the data supporting the petition, EPA determined that the proposed tolerances on ''vegetable, fruiting, group 8'' and ''okra'' should be decreased from 0.80 ppm to 0.40 ppm. EPA revised these tolerance levels based on analysis of the residue field trial data using the Agency's Tolerance Spreadsheet in accordance with the Agency's *Guidance for Setting Pesticide Tolerances Based on Field Trial Data.*

V. Conclusion

Therefore, tolerances are established for combined residues of cyazofamid, 4-chloro-2-cyano- *N*,*N* -dimethyl-5-(4-methylphenyl)-1*H*-imidazole-1-sulfonamide, and its metabolite CCIM, 4-chloro-5-(4-methylphenyl)-1*H*-imidazole-2-carbonitrile, expressed as cyazofamid, in or on vegetable, fruiting, group 8 at 0.40 ppm; and okra at 0.40 ppm. Additionally, a tolerance with regional restrictions is established in or on grape at 1.5 ppm. Finally, this regulation removes the established grape import and tomato tolerances, as a regional tolerance on grape and fruiting vegetable group tolerance replaces them, respectively.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from*

Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 26, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.601 is amended as follows:

i. By removing the commodities ''Grape, wine,* import'' and ''Tomato'' and the footnote in the table in paragraph (a).

ii. By alphabetically adding the following commodities to the table in paragraph (a) and by revising paragraph (c) to read as follows:

§ 180.601 Cyazofamid; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	*
Okra	0.40
* * * * *	*
Vegetable, fruiting, group 8	0.40

* * * * *

(c) *Tolerances with regional registrations.* Tolerances with regional registrations are established for the combined residues of cyazofamid, 4-chloro-2-cyano- *N*,*N*-dimethyl-5-(4-methylphenyl)-1*H*-imidazole-1-sulfonamide, and its metabolite CCIM, 4-chloro-5-(4-methylphenyl)-1*H*-imidazole-2-carbonitrile, expressed as cyazofamid, in or on the following commodities:

Commodity	Parts per million
Grape	1.5

* * * * *

[FR Doc. E9–15945 Filed 7–7–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0256; FRL–8422–3]

2-Propenoic acid, 2-methyl-, polymers with Bu acrylate, Et acrylate, Me methacrylate and polyethylene glycol methacrylate C_{16-18}-alkyl ethers; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 2-propenoic acid, 2-methyl-, polymers with Bu acrylate, Et acrylate, Me methacrylate and polyethylene glycol methacrylate C_{16-18}-alkyl ethers; when used as an inert ingredient in a pesticide chemical formulation. BASF Corporation, 100 Campus Drive, Florham Park, NJ 07932 submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2-propenoic acid, 2-methyl-, polymers with Bu acrylate, Et acrylate, Me methacrylate and polyethylene glycol methacrylate C_{16-18}-alkyl ethers on food or feed commodities.

DATES: This regulation is effective July 8, 2009. Objections and requests for hearings must be received on or before September 8, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0256. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at

http://www.regulations.gov, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Alganesh Debesai, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8353; e-mail address: *debesai.alganesh@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0256 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 8, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2009–0256, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of May 6, 2009 (74 FR 20947) (FRL–8412–7), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 9E7541) filed by BASF Corporation, 100 Campus Drive, Florham Park, NJ 07932. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 2-propenoic acid, 2-methyl-, polymers with Bu acrylate, Et acrylate, Me methacrylate and polyethylene glycol methacrylate $C_{16\text{-}18}$-alkyl ethers; (CAS Reg. No. 890051–63–5). That notice included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and use in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . .'' and specifies factors EPA is to consider in establishing an exemption.

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity,

completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). 2-Propenoic acid, 2-methyl-, polymers with Bu acrylate, Et acrylate, Me methacrylate and polyethylene glycol methacrylate C_{16-18}-alkyl ethers conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 13,000 is greater than or equal to 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, 2-propenoic acid, 2-methyl-, polymers with Bu acrylate, Et acrylate, Me methacrylate and polyethylene glycol methacrylate C_{16-18}-alkyl ethers meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 2-propenoic acid, 2-methyl-, polymers with Bu acrylate, Et acrylate, Me methacrylate and polyethylene glycol methacrylate C_{16-18}-alkyl ethers.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 2-propenoic acid, 2-methyl-, polymers with Bu acrylate, Et acrylate, Me methacrylate and polyethylene glycol methacrylate C_{16-18}-alkyl ethers could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of 2-propenoic acid, 2-methyl-, polymers with Bu acrylate, Et acrylate, Me methacrylate and polyethylene glycol methacrylate C_{16-18}-alkyl ethers is 13,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 2-propenoic acid, 2-methyl-, polymers with Bu acrylate, Et acrylate, Me methacrylate and polyethylene glycol methacrylate C_{16-18}-alkyl ethers conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' For the purposes of this tolerance action, EPA has not assumed that 2-propenoic acid, 2-methyl-, polymers with Bu acrylate, Et acrylate, Me methacrylate and polyethylene glycol methacrylate C_{16-18}-alkyl ethers has a common mechanism of toxicity with other substances, based on the anticipated absence of mammalian toxicity. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of 2-propenoic acid, 2-methyl-, polymers with Bu acrylate, Et acrylate, Me methacrylate and polyethylene glycol methacrylate C_{16-18}-alkyl ethers, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of 2-propenoic acid, 2-methyl-, polymers with Bu acrylate, Et acrylate, Me methacrylate and polyethylene glycol methacrylate C_{16-18}-alkyl ethers.

VIII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Tolerances

The Agency is not aware of any country requiring a tolerance for 2-propenoic acid, 2-methyl-, polymers with Bu acrylate, Et acrylate, Me methacrylate and polyethylene glycol methacrylate C_{16-18}-alkyl ethers nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

IX. Conclusion

Accordingly, EPA finds that exempting residues of 2-propenoic acid, 2-methyl-, polymers with Bu acrylate, Et acrylate, Me methacrylate and polyethylene glycol methacrylate C_{16-18}-alkyl ethers from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules

from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, or otherwise have any unique impacts or local governments. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Although this action does not require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated:June 25, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In §180.960, the table is amended by adding alphabetically the following polymer to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * * *	
2-Propenoic acid, 2-methyl-, polymers with Bu acrylate, Et acrylate, Me methacrylate and polyethylene glycol methacrylate C_{16-18}-alkyl ethers, minimum number average molecular weight (in amu), 13,000.	890051–63–5
* * * * *	

[FR Doc. E9–16055 Filed 7–7–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0888; FRL–8423–1]

Polyglyceryl Phthalate Ester of Coconut Oil Fatty Acids; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of polyglyceryl phthalate ester of coconut oil fatty acids (PPECFA) when used as inert ingredients in pesticide formulations applied to growing crops and raw agricultural commodities after harvest. The Joint Inerts Task Force (JITF), Cluster Support Team Number 23 submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of PPECFA.

DATES: This regulation is effective July 8, 2009. Objections and requests for hearings must be received on or before September 8, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION)**.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0888. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose

disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Kerry Leifer, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8811; e-mail address: *leifer.kerry@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part # 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0888 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before September 8, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2009–0045, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background

In the **Federal Register** of March 25, 2009 (74 FR 12856) (FRL–8399–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E7465) by the JITF, Cluster Support Team Number 23 (CST 23), c/o CropLife America, 1156 15th Street, NW., Suite 400, Washington, DC 20005, The petition requested that 40 CFR 180.910 be amended by establishing an exemption from the requirement of a tolerance for residues of the inert ingredient PPECFA (this substance is also referred to throughout this document as PPECFA). That notice referenced a summary of the petition prepared by the JITF, CST 23, the petitioner, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

This petition was submitted in response to a final rule of August 9, 2006, (71 FR 45415) in which the Agency revoked, under section 408(e)(1) of the FFDCA, the existing exemptions from the requirement of a tolerance for residues of certain inert ingredients because of insufficient data to make the determination of safety required by FFDCA section 408(b)(2). The expiration date for the tolerance exemptions subject to revocation was August 9, 2008, which was later extended to August 9, 2009 (73 FR 45312) to allow for data to be submitted to support the establishment of tolerance exemptions for these inert ingredients prior to the effective date of the tolerance exemption revocation.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the

legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for exemption from the requirement of a tolerance for residues of PPECFA when used as inert ingredients in pesticide formulations applied to growing crops or food-producing animals. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

PPECFA is not acutely toxic by the oral or dermal routes of exposure and is slightly irritating to the eyes, and non-irritating to the skin. It is not a skin sensitizer. There was no hazard identified in a combined repeat dose rat reproductive/developmental screening study at the limit dose of 1,000 milligrams/kilogram/day (mg/kg/day) to either parental animals or their offspring. There is no concern for neurotoxicity, immunotoxicity or carcinogenicity for PPECFA.

Specific information on the studies received and the nature of any observed effects caused by PPECFA as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''PPECFA; JITF CST 23 Inert Ingredients)''. *Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations*, pp 5–7 in docket ID number EPA–HQ–OPP–2008–0888.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-term, intermediate-term, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

There was no hazard identified in a combined repeated dose toxicity study with the reproduction/developmental toxicity screening test in rats with PPECFA at the limit dose of 1,000 mg/kg/day to either parental animals or their offspring. Thus, due to their low potential hazard and the lack of a hazard endpoint, the Agency has determined that a quantitative risk assessment using safety factors applied to a POD protective of an identified hazard endpoint is not appropriate.

The Agency used a qualitative structure activity relationship (SAR) database, DEREK11, to determine if there were structural alerts for potential carcinogenicity of PPECFA. No structural alerts for carcinogenicity were identified. PPECFA is not expected to be carcinogenic.

C. Exposure Assessment

1. *Dietary exposure (from food and feed uses and drinking water).* Since an endpoint for risk assessment was not identified, a quantitative exposure assessment for PPECFA was not conducted. Any possible dietary exposure to PPECFA from its use as an inert ingredient in pesticide products would be through consumption of food to which pesticide products containing it have been applied and through drinking water (from runoff).

2. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).There are no residential uses for PPECFA.

3. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found PPECFA to share a common mechanism of toxicity with any other substances, and PPECFA does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that PPECFA does not have a common mechanism of toxicity with other substances. For information regarding

EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

The toxicity database for PPECFA is adequate for FQPA assessment and the potential exposure is adequately characterized given the low toxicity of the chemical. There was no hazard identified in a combined repeat dose rat reproductive/developmental screening study at the limit dose of 1,000 mg/kg/day to either parental animals or their offspring. There is no concern for neurotoxicity, immunotoxicity or carcinogenicity for PPECFA.

Based on this information, there is no concern, at this time, for increased sensitivity to infants and children to PPECFA when used as an inert ingredient in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest and a safety factor analysis has not been used to assess risk. For the same reason, EPA has determined that an additional safety factor is not needed to protect the safety of infants and children.

E. Aggregate Risks and Determination of Safety

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert ingredient in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

No data were submitted for PPECFA with respect to plant and animal metabolism or environmental degradation. Although the available toxicity data for PPECFA did not show any toxicity at up to 1,000 mg/kg/day (the limit dose), which addresses the issue of potentially toxic *in vivo* metabolites, the Agency also considered degradation of PPECFA in the environment particularly the potential for PPECFA to degrade to alkyl phthalate esters. Alkyl phthalate esters such as bis(2-ethylhexyl) phthalate (DEHP) have been shown to have concerns for teratogenicity, carcinogenicity, liver toxicity, and male reproductive toxicity. Based on physical and chemical characteristics and likely degradation processes, PPECFA is expected to degrade in the environment to phthalic acids, substances which do not exhibit the same toxicity as alkyl phthalate esters and are not of toxicological concern.

Since an endpoint for risk assessment was not identified, a quantitative dietary risk assessment for PPECFA was not conducted. Given the lack of concern for hazard posed by PPECFA, EPA concludes that there are no dietary risks of concern as a result of exposure to PPECFA in food and water. Additionally, since there are no residential uses for PPECFA, a residential risk assessment was not performed. The Agency has not identified any concerns for carcinogenicity relating to PPECFA.

Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to residues of PPECFA.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

The Agency is not aware of any country requiring a tolerance for PPPECFA nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

VI. Conclusion

Therefore, an exemption from the requirement of a tolerance is established for residues of PPECFA when used as an inert ingredient in pesticide formulations applied to growing crops or to animals.

VII. Statutory and Executive Order Reviews

This final rule establishes exemptions under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined

that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 25, 2009.

Lois Rossi,

Director, Registration Division, Office of Pestiicide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In §180.910, the table is amended by adding alphabetically the following inert ingredients to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert Ingredients	Limits	Uses
* * * * *	*	* *
Polyglyceryl phthalate ester of coconut oil fatty acids (CAS Reg. Nos. 67746–6070–9		Surfactants, related adjuvants of surfactants
* * * * *	*	* *

[FR Doc. E9–15927 Filed 7–7–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2006–0898; FRL–8398–5]

RIN 2070–AB27

Dodecanedioic acid, 1, 12-dihydrazide and Thiophene, 2,5-dibromo-3-hexyl-; Significant New Use Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for two chemical substances which were the subject of premanufacture notices (PMNs). The two substances are dodecanedioic acid, 1, 12-dihydrazide (CAS No. 4080–98–2; PMNs P–01–759 and P–05–555) and thiophene, 2,5-dibromo-3-hexyl- (CAS No. 116971–11–0; PMN P–07–283). Today's action requires persons who intend to manufacture, import, or process either of these two substances for a use that is designated as a significant new use by this final rule to notify EPA at least 90 days before commencing that activity. EPA believes that this action is necessary because these chemical substances may be hazardous to human health and the environment. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

DATES: This final rule is effective August 7, 2009

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2006–0898. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Karen Chu, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8773; e-mail address: *chu.karen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use either of the chemical substances contained in this rule: Dodecanedioic acid, 1, 12-dihydrazide (CAS No. 4080–98–2; PMNs P–01–759 and P–05–555) and thiophene, 2,5-dibromo-3-hexyl- (CAS No. 116971–11–0; PMN P–07–283). Potentially affected entities may include, but are not limited to:

- Manufacturers, importers, or processors of one or more subject chemical substances (NAICS codes 325

and 324110), e.g., Chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Persons who import any chemical substance governed by a final SNUR are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements and the corresponding regulations at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Those persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see 40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

II. Background

A. What Action is the Agency Taking?

EPA is finalizing SNURs under section 5(a)(2) of TSCA for two chemical substances which were the subject of premanufacture notices (PMNs). The two substances are dodecanedioic acid, 1, 12-dihydrazide (CAS No. 4080–98–2; PMNs P–01–759 and P–05–555) and thiophene, 2,5-dibromo-3-hexyl- (CAS No. 116971–11–0; PMN P–07–283). This action requires persons who intend to manufacture, import, or process either of these two substances for an activity that is designated as a significant new use by this final rule to notify EPA at least 90 days before commencing that activity.

Previously, in the **Federal Register** of September 19, 2007 (72 FR 53470) (FRL–8135–8), EPA issued direct final SNURs on these two substances (see 40 CFR 721.10057 and 721.10088). However, EPA received notices of intent to submit adverse comments on these SNURs. Therefore, as required by 40 CFR 721.170(d)(4)(i)(B), EPA withdrew the direct final SNURs on these two substances and subsequently proposed SNURs under notice and comment procedures (June 9, 2008 (73 FR 32508) (FRL–8351–4)). The record for the direct final and proposed SNURs for these substances was established as docket EPA–HQ–OPPT–2006–0898. That record includes information considered by the Agency in developing the direct final rule and this final rule including comments on the direct final and proposed rules.

EPA received no comments regarding the proposed SNUR on dodecanedioic acid, 1, 12-dihydrazide (CAS No. 4080–98–2; PMNs P–01–759 and P–05–555) and is finalizing the rule as proposed. Significant new use designations for this substance are summarized as follows: Use of the substance without 1) workers wearing gloves, 2) workers wearing a National Institute for Occupational Safety and Health (NIOSH) approved full-face respirator with an assigned protection factor (APF) of at least 50, and 3) appropriate hazard communication. See the proposed rule for a complete discussion of the basis for EPA's action, including hazard concerns for the substance and recommended testing.

EPA received comments from Plextronics, the submitter of the PMN on thiophene, 2,5-dibromo-3-hexyl- (CAS No. 116971–11–0; PMN P–07–283) (Ref. 1). A discussion of EPA's response to these comments is included in Unit V. Based on these comments, EPA is issuing a modified final rule on this substance that (1) retains the proposed maximum surface water concentration limit trigger of 1 part per billion (ppb) from manufacturing, processing, and use, and (2) raises the annual company manufacture and import volume limit trigger from 500 kilograms to 4,500 kilograms.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) (15 U.S.C. 2604(a)(1)(B)) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Persons who must submit a SNUN are described in 40 CFR 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear under 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. According to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who export or intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707, subpart D. Persons who import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, codified at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Such persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy statement in support of the import certification appears at 40 CFR part 707, subpart B.

III. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs, EPA determined that one or more of the criteria of concern established at 40 CFR 721.170 were met. For a discussion of the rationale for the SNUR on dodecanedioic acid, 1, 12-dihydrazide

(CAS No. 4080–98–2; PMNs P–01–759 and P–05–555), see Unit III. of the direct final SNUR (September 19, 2007 (72 FR 53470)) and Unit IV. of the proposed SNUR (June 9, 2008 (73 FR 32508)). For a discussion of the rationale for the SNUR on thiophene, 2,5-dibromo-3-hexyl- (CAS No. 116971–11–0; PMN P–07–283), see Units IV. and V. of this document, as well as Unit III. of the direct final SNUR (September 19, 2007 (72 FR 53470)) and Unit IV. of the proposed SNUR (June 9, 2008 (73 FR 32508)).

B. Objectives

EPA is issuing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this rule:

- EPA will receive notice of any person's intent to manufacture, import, or process a listed chemical substance for the described significant new use before that activity begins.
- EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for the described significant new use.
- EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6, or 7.

IV. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorizes EPA to consider any other relevant factors.

EPA's decision to designate a maximum surface water concentration of 1 ppb as a significant new use for thiophene, 2,5-dibromo-3-hexyl- (CAS No. 116971–11–0; PMN P–07–283) primarily reflects consideration of the third and fourth factors listed in the bulleted items in Unit IV. Based on structure activity relationship analyses for thiophenes, EPA is concerned that toxicity to aquatic organisms may occur at concentrations above 1 ppb of the PMN substance in surface waters. Initial review of the PMN showed that releases of the PMN substance to surface waters from manufacturing, processing, and use of the PMN substance at sites other than those identified in the PMN that have less protective management practices could result in surface water concentrations above 1 ppb for more than 20 days per year, thereby presenting a chronic risk to aquatic organisms (Ref. 2). Additionally, the substance is expected to significantly bioaccumulate (Ref. 5).

EPA's decision to also designate an annual manufacture and import volume of 4,500 kilograms as a significant new use for thiophene, 2,5-dibromo-3-hexyl- (CAS No. 116971–11–0; PMN P–07–283) reflects consideration of the first factor, the projected volume of manufacturing and processing of a chemical substance. The use of thiophene and its derivatives in electronic applications is escalating. Plextronics' website indicates the technology involving this substance 1) is capable of ''commercial-scale manufacturability,'' and 2) that the market for such ''printed electronics was approximately $1 billion in 2006 and is expected to exceed $300 billion within 20 years'' (Ref. 3). Thus, it is reasonable to expect that use of the substance may grow significantly beyond the 3rd–year estimate in the PMN and that those higher manufacture and import volumes would result in increased environmental exposure to the PMN substance.

V. Response to Comments on Proposed SNUR on Thiophene, 2,5-dibromo-3-hexyl-

EPA received comments from the submitter, Plextronics, on the proposed SNUR for thiophene, 2,5-dibromo-3-hexyl- (CAS No. 116971–11–0; PMN P–07–283) (Ref. 1). A discussion of the comments and the Agency's responses follows.

Comment 1: EPA's structure activity relationship analysis is not supported by valid test data on analogous substances.

Response: EPA's Structure Activity Relationships (SARs) predictions for thiophenes are supported by scientifically valid ecotoxicity test results on algae, daphnia, and fish on multiple thiophene substances (Ref. 4). For example, the measured daphnid chronic value was 1.8 parts per million (ppm) for one thiophene substance, whose chemical identity was claimed as TSCA confidential business information. The measured log octanol/water partition coefficient (log K_{ow}) value for this CBI substance was 1.7. The difference between the measured toxicity values supporting the thiophene SARs and the predicted chronic aquatic concentration of concern of 1 ppb for thiophene, 2,5-dibromo-3-hexyl is almost completely due to differences in their measured or estimated log K_{ow} values. This is especially the case at relatively high log K_{ow} values. The estimated log K_{ow} for thiophene, 2,5-dibromo-3-hexyl is 6.6.

Importantly, because the toxicity of chemical classes converge at log K_{ow} values of 5–8, the 1 ppb level is also supported by use of neutral organic SARs, which are supported by many valid test data points (Ref. 4). The predicted chronic concentration of concern for thiophene, 2,5-dibromo-3-hexyl (CAS No. 116971–11–0; PMN P–07–283) using neutral organic SARs is also 1 ppb. Thus, based on this further examination of the data and calculations regarding the aquatic toxicity of the substance, the Agency finds that the PMN substance meets the concern criteria at § 721.170(b)(4)(iii) as well as the concern criteria at § 721.170(b)(4)(ii), which was indicated in the previous direct final rule and proposed rule on the substance.

Comment 2: The rulemaking record does not contain information indicating that release of the substance may present an unreasonable risk, i.e., result in surface water concentrations above the 1 ppb concentration of concern, at an annual production volume of 500 kilograms or greater. Therefore, the Agency has not justified the need for a production volume limit.

Response: Congress did not require in TSCA that EPA must find that a significant new use may present unreasonable risk. Rather, TSCA section 5(a)(2) requires only that EPA ''consider all relevant factors'' when promulgating a SNUR. According to 40 CFR 721.170(a), EPA may issue significant new use notification and recordkeeping requirements if EPA determines that ''activities other than those in the premanufacture notice may result in significant changes in human exposure or environment release levels and/or concern exists about the substance's health or environmental effects'' (also see 40 CFR 721.170(c)(2)). As discussed

in Unit IV., it is reasonable to expect that use of the substance may grow significantly beyond the 3rd–year estimate stated in the PMN and that higher production volumes will result in increased environmental exposure to the PMN substance. Also, EPA has hazard concerns for the substance; the Agency has determined that the substance may be highly toxic to aquatic organisms and meets the concern criterion at § 721.170(b)(4)(ii) and § 721.170(b)(4)(iii). Receipt of a SNUN allows EPA to review and assess potential risks that might be presented by significant new use activities.

Additionally, the EPA exposure report in the docket that predicts low concern for aquatic toxicity effects at the stated PMN production volume reflects surface water concentration estimates based on the site, operations, and management practices identified in the PMN and subsequent submitter correspondence. Initial review of the PMN showed that manufacturing, processing, and use of the PMN at sites other than those identified in the PMN that have less protective management practices could result in releases of the substance that would result in surface water concentrations above 1 ppb for more than 20 days per year (Ref. 2). This difference in risk estimates based on site and management practices further supports the Agency's concerns regarding the chemical substance and the basis for this SNUR.

Comment 3: Designation of both annual production (i.e., manufacture and import) volume and water release triggers as a significant new use is unjustified.

Response: EPA respectfully disagrees. Unit IV. contains the justifications for the water release and production volume significant new use triggers. Surface water concentration and production volume each may make an independent contribution to risk. This is because production volume can be highly related to exposure even where surface water concentration remains the same. The Agency currently uses the industry-provided, 3rd-year production volume estimate in the PMN to assess the potential environmental and health effects of a new chemical. Thus, if EPA has reason to believe that the production volume for a substance of concern could significantly surpass that designated in the PMN for the first three years of manufacture, EPA will consider taking regulatory action and designating some production volume as a significant new use.

Comment 4: If a production (i.e., manufacture and import) volume limit is justified, it should be set at a significant level above the 3rd-year volume in the PMN and also be set at a level where the recommended testing is economically feasible.

Response: In consideration of the comments received on the proposed SNUR, expected market growth, and review of analogous substances, EPA is raising the annual company production volume limit in the final SNUR to 4,500 kilograms. EPA views this volume as significantly different from the 3rd-year production volume estimate in the PMN. Notably, in designating this volume as a significant new use, EPA is not trying to predict or imply at what volume a risk could occur or to estimate at what aggregate volume would any recommended testing on the substance be economically feasible.

VI. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication of the proposed SNUR rather than as of the effective date of the final rule. If uses begun after publication of the proposed SNUR were considered ongoing, rather than new, it would be difficult for EPA to establish SNUR notice requirements because a person could defeat the SNUR by initiating the proposed significant new use before the rule became effective, and then argue that the use was ongoing as of the effective date of the final rule.

Any person who began commercial manufacture, import, or processing of dodecanedioic acid, 1, 12-dihydrazide (CAS No. 4080–98–2; PMNs P–01–759 and P–05–555) or thiophene, 2,5-dibromo-3-hexyl- (CAS No. 116971–11–0; PMN P–07–283) for any of the significant new uses designated in the proposed SNUR after the date of publication of the proposed SNUR must stop that activity before the effective date of this rule. Persons who ceased those activities will have to meet all SNUR notice requirements and wait until the end of the notification review period, including all extensions, before engaging in any activities designated as significant new uses. If, however, persons who began manufacture, import, or processing of either of these chemical substances between the date of publication of the proposed SNUR and the effective date of this final SNUR meet the conditions of advance compliance as codified at 40 CFR 721.45(h), those persons would be considered to have met the final SNUR requirements for those activities.

VII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN (except where the chemical substance subject to the SNUN is also subject to a section 4 test rule). Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (40 CFR 721.25(a) and 720.50.) However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit III. of the proposed rule (June 9, 2008 (73 FR 32508)) lists recommended testing for these two substances. Descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. Many test guidelines are now available on the Internet at *http://www.epa.gov/opptsfrs/home/guidelin.htm*.

The recommended tests may not be the only means of addressing the potential risks of the chemical substance. However, SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Potential benefits of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

VIII. SNUN Submissions

SNUNs must be mailed to the Environmental Protection Agency, OPPT Document Control Office (7407M), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Information must be submitted in the form and manner set forth in EPA Form No. 7710–25. This form is available from the Environmental Assistance Division (7408M), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 (see 40 CFR 721.25 and 720.40). Forms

and information are also available electronically at *http://www.epa.gov/opptintr/newchems/pubs/pmnforms.htm*.

IX. Economic Analysis

EPA evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of these two chemical substances at the time of the direct final rule. The Agency's complete Economic Analysis is available in the public docket for the direct final rule (Ref. 6). For dodecanedioic acid, 1, 12-dihydrazide (CAS No. 4080–98–2; PMNs P–01–759 and P–05–555), the difference in hazard communication requirements between this final SNUR and the direct final SNUR (i.e., removal of the requirement for specific identification of cancer and developmental toxicity endpoints in workplace hazard communication materials) could slightly reduce estimated costs to regulated entities. For thiophene, 2,5-dibromo-3-hexyl- (CAS No. 116971–11–0; PMN P–07–283), the manufacture and import volume limit is higher in the final SNUR than in the direct final SNUR (4,500 kg/yr vs. 500 kg/yr). While the higher manufacture and import volume limit does not directly change SNUN costs, it should make it more feasible for regulated entities to elect to submit the recommended testing for the substance with the SNUN.

X. References

The official record for this final rule has been established. The following is a listing of the documents referenced in this preamble that have been placed in the docket for this final rule under docket ID number EPA–HQ–OPPT–2006–0898, which is available for inspection as specified under **ADDRESSES**.

1. Plextronics. Comments on the Proposed Significant New Use Rule for the Chemical Substance under Premanufacture Notice Case Number P–07–0283. July 8, 2008. EPA–HQ–OPPT–2006–0898–0069.2.

2. EPA. Sanitized Initial Review Exposure Report for P–07–283 at SIC Code. March 16, 2007. EPA–HQ–OPPT–2006–0898–0083.

3. Plextronics. Plextronics Webpage (*www.plextronics.com/aboutus.aspx*). November 5, 2008. EPA–HQ–OPPT–2006–0898–0084.

4. EPA. Ecological Structure Activity Relationships for Neutral Organics and Thiophenes. 2007. EPA–HQ–OPPT–2006–0898–0086.

5. EPA. Sanitized Engineering and Structure Activity Team Reports for P–07–283. March, 2007. EPA–HQ–OPPT–2006–0898–0057.

6. EPA. Economic Analysis of Expedited Significant New Use Rule for 38 Chemical Substances. August 13, 2007. EPA–OPPT–2006–0898–0058.

XI. Statutory and Executive Order Reviews

A. Executive Order 12866

This final rule establishes SNURs for several new chemical substances that were the subject of PMNs, or TSCA section 5(e) consent orders. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 0574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average 110 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of these SNURs will not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 1,000 SNURs, the Agency receives on average only 5 notices per year. Of those SNUNs submitted from 2006–2008, only one appears to be from a small entity. In addition, the estimated reporting cost for submission of a SNUN (see Unit IX.) is minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impacts of complying with these SNURs are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published on June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act

Based on EPA's experience with SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates

Reform Act of 1995 (UMRA) (Public Law 104–4).

E. Executive Order 13132

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This rule does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This rule does not significantly or uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), do not apply to this rule.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

XII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: June 30, 2009.

Wendy C. Hamnett,

Acting Director, Office of Pollution Prevention and Toxics.

■ Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. By adding new § 721.10057 to subpart E to read as follows:

§ 721.10057 Dodecanedioic acid, 1, 12-dihydrazide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as dodecanedioic acid, 1, 12-dihydrazide (PMNs P–01–759 and P–05–555; CAS No. 4080–98–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(3), (a)(4), (a)(5), (a)(6)(i), (a)(6)(ii), (b), and (c). Respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50. The following NIOSH-approved respirators meet the minimum requirement for § 721.63(a)(4): Air-purifying, tight-fitting full-face respirator equipped with N100 (if oil aerosols absent), R100, or P100 filters; powered air-purifying respirator equipped with a tight-fitting full facepiece and High Efficiency Particulate Air (HEPA) filters; supplied air respirator operated in pressure demand or continuous flow mode and equipped with a tight-fitting full facepiece. Because the substance is a dermal sensitizer and irritates mucous membranes, half-face respirators do not provide adequate protection.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(i), and (g)(2)(i).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (f), (g), and (h) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

■ 3. By adding new § 721.10088 to subpart E to read as follows:

§ 721.10088 Thiophene, 2,5-dibromo-3-hexyl-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as thiophene, 2,5-dibromo-3-hexyl- (PMN P–07–283; CAS No. 116971–11–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(s) (4,500 kilograms).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. E9–15931 Filed 7–7–09; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1357, MB Docket No. 07–279; RM–11411; RM–11422; RM–11423].

FM Table of Allotments, Buffalo, Iola, Madisonville, and Normangee, Texas.

AGENCY: Federal Communications Commision.

ACTION: Final rule.

SUMMARY: The staff grants a counterproposal filed by Roy E. Henderson to allot Channel 299A to Buffalo, Texas, as a second local service. The staff also dismisses a rulemaking petition filed by Charles Crawford to allot Channel 299A at Iola, Texas, and denies a counterproposal filed by Katherine Pyeatt to allot Channel 267A at Normangee, Texas. The reference coordinates for Channel 299A at Buffalo, Texas, are 31–28–44 NL and 96–10–02 WL.

DATES: Effective August 10, 2009.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 07–279, DA 09–1357, adopted June 17, 2009, and released June 19, 2009. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, 800–378–3160 or via the company's website, <http://www.bcpiweb.com>.

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4). The Commission will send a copy of the Report and Order in this proceeding in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

The Notice of Proposed Rule Making in this proceeding proposed the allotment of Channel 299A at Iola, Texas. See 73 FR 1576 (January 9, 2008). The Report and Order dismisses this rulemaking proposal because Crawford did not file a continuing expression of interest in the proposed allotment as required in the Notice of Proposed Rule Making. The Report and Order also denies Pyeatt's counterproposal on technical grounds because it is no longer capable of being implemented. Specifically, the allotment of Channel 267A at Normangee requires that Pyeatt's Station KKLB(FM), Madisonville, Texas, be modified from Channel 267A to Channel 299C3. However, this modification of the Station KKLB(FM) construction permit to a higher class, non–adjacent channel cannot be made consistent with the requirements of Section 1.420(g) of the Commission's rules because a competing expression of interest in Channel 299C3 at Madisonville, Texas, was filed, and there is no other equivalent class channel available at Madisonville to accommodate this additional expression of interest. Henderson's counterproposal was the sole remaining proposal and was granted because it would provide a second aural transmission service, as well as a first commercial service, to Buffalo.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BRAODCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Buffalo, Channel 299A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief.

[FR Doc. E9–16044 Filed 7–7–09; 8:45 am]

BILLING CODE 6712–01–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 080521698–91087–03]

RIN 0648–AW87

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Secretarial Final Interim Action

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary final rule; interim measures.

SUMMARY: This action modifies interim management measures implemented for the Northeast (NE) multispecies fishery through a previous interim final rule, and corrects several errors. Specifically, this rule removes the current trip limit for Georges Bank (GB) winter flounder and increases the white hake trip limit, reinstates regulatory provisions of the NE Multispecies Day-at-Sea (DAS) Leasing Program and the Closed Area I Hook Gear Haddock Special Access Program (SAP) that were inadvertently removed, and corrects several Total Allowable Catch (TAC) specifications, and latitude/longitude coordinates.

DATES: Effective July 2, 2009, through October 28, 2009.

FOR FURTHER INFORMATION CONTACT: Tom Warren, Fishery Policy Analyst, (978) 281–9347, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Correction of Errors and Clarification

A temporary rule, which modified the NE Multispecies fishery management plan (FMP) by temporarily suspending the differential DAS counting provisions and extending the deadline for NE Multispecies DAS Leasing Program applications for the 2008 fishing year, published in the **Federal Register** on March 11, 2009 (74 FR 10513), with public comment accepted through April 10, 2009. This temporary rule was in response to a January 26, 2009, Federal Court Order in the case of *Commonwealth of Massachusetts and State of New Hampshire* v. *Carlos M. Gutierrez* (Civil Action No.: 06–12110–EFH) (Court Order), which suspended the regulations regarding differential DAS counting in the Gulf of Maine (GOM) and Southern New England (SNE) Differential DAS Areas through April 10, 2009.

A complete discussion of the temporary suspension of specific regulations and extension of the DAS lease application deadline appears in the preamble to the temporary rule and is not repeated here.

Because of an error in the amendatory instructions in the temporary rule, when the changes expired on April 10, 2009, the introductory paragraph of § 648.82(k)(3) was removed from the CFR, rather than reverting to the language in effect prior to the temporary rule. The regulatory text at § 648.82(k)(3) provides details about the DAS Leasing Program application process, including: Application signature requirements, expected application processing time, procedure for notifying applicants when an application is incomplete, the deadline for submission of an application, and clarification that vessel owners may submit multiple leases during a fishing year but individual DAS may only be leased once. This action reinstates the introductory paragraph at § 648.82(k)(3) as it read prior to the March 11, 2009, temporary rule.

A proposed rule for Secretarial interim action was published in the **Federal Register** on January 16, 2009 (74 FR 2959), that proposed management measures for the NE multispecies complex for FY 2009, while the New England Fishery Management Council (Council) completes Amendment 16 to the FMP. The proposed rule included a variety of management measures to reduce fishing mortality. A final interim rule implementing management measures for the NE multispecies fishery for FY 2009 was published on April 13, 2009 (69 FR 17063), and became effective May 1, 2009. The final interim rule solicited public comment through June 12, 2009. Included in the suite of management measures were modifications to the Closed Area I Hook Gear Haddock Special Access Program (SAP). As published, the final interim rule inadvertently repeated the regulatory text on Vessel Monitoring System declaration requirements for this SAP at § 648.85(b)(11)(iv)(D) in § 648.85(b)(11)(vi)(D). This rule reinstates the correct language for § 648.85(b)(11)(vi)(D) regarding the daily catch reporting requirements for non-sector vessels.

The final interim rule for FY 2009 also incorrectly stated the latitude/longitude coordinates for two of the stock areas defined for the Regular B DAS Program (Cape Cod (CC)/GOM yellowtail flounder stock area, and the SNE/Mid Atlantic (MA) yellowtail flounder stock area). This rule corrects the pertinent coordinates.

The final interim rule for FY 2009 also incorrectly specified the GB cod incidental catch TAC and allocations of this TAC to the Special Management Programs. As explained in detail in the final interim rule, the GB cod TAC (5,501 mt) was developed based upon the Groundfish Assessment Review Meeting in 2008 (GARM III) information and the estimated fishing mortality rate resulting from measures implemented by the action. Because the GB cod TAC includes Canadian catch, the amount of anticipated Canadian catch must be subtracted from the total TAC to derive the net U.S. TAC. The net GB cod TAC available for the U.S. fishery is derived by subtracting the Canadian TAC from the total TAC (5,501 mt - 1,173 mt = 4,328 mt). In the final interim rule, the GB cod incidental catch TAC (and related allocations of this TAC) were incorrectly calculated based upon the total GB cod TAC (5,501 mt) instead of the U.S. portion of the TAC (4,328 mt). Therefore, this action specifies the GB cod TAC and associated TACs as follows, based upon 4,328 mt, resulting in slightly lower TACs than specified in the April 13, 2009, final interim rule.

TABLE 1—SPECIFICATION OF GB COD INCIDENTAL CATCH TACS

TAC	Calculation	Previous TAC mt	Revised TAC mt
GB Cod Incidental Catch TAC	2% of GB Cod TAC	110.0	86.6
Regular B DAS Program GB Cod Incidental Catch TAC	70% of GB Cod Incidental Catch TAC	77.0	60.6
Closed Area I Hook Gear Haddock Special Access Program	14% of GB Cod Incidental Catch TAC	17.6	13.9
Eastern U.S./Canada Haddock Special Access Program	16% of GB Cod Incidental Catch TAC	15.4	12.1

Lastly, the interim rule implemented a prohibition on the use of low profile, tie-down gillnets in the Regular B DAS Program, but the regulations may not be sufficiently clear regarding the trip limits associated with the use of stand-up gillnets, which are allowed to be used in the program. Framework Adjustment (FW) 42 to the FMP implemented gear performance incentives for the Regular B DAS Program (71 FR 62156; October 23, 2006) that applied to the haddock separator trawl, as well as other gears that may be authorized for Special Management Programs in the future. The FW 42 regulations neither prohibited nor explicitly allowed the use of gillnets in the Regular B DAS Program. Therefore, it was not sufficiently clear in the regulations whether the gear performance incentives applied to gillnet gear. Because the interim final rule for FY 2009 prohibited low profile gillnet gear, but did not clarify whether the gear performance incentives apply to stand-up gillnets, this rule modifies existing regulatory text to make it clear that vessels fishing in the Regular B DAS Program with stand-up gillnets are subject to the same possession limit restriction as trawl vessels fishing in the Regular B DAS Program. These possession limits are as follows: 500 lb (226.8 kg) of flounders (all species, combined), 500 lb (226.8 kg) of monkfish (whole weight), 500 lb (226.8 kg) of skates (whole weight), and zero lb of lobsters, ocean pout, SNE/MA winter flounder, and windowpane flounder (north). This is consistent with the use of regulatory incentives in the Regular B DAS Program and gear performance standards to promote fishing behavior and methods of gear use that minimize catch of stocks of concern.

Modification of Trip Limits

The proposed interim rule for FY 2009 noted above included a variety of management measures to reduce fishing mortality, including new trip limits. The proposed rule included less restrictive limits than the status quo for GB winter flounder and white hake (i.e., no trip limit and 2,000 lb (909.1 kg)/DAS up to 10,000 lb (4,545.5 kg)/trip, respectively). In contrast to the proposed rule, the April 13, 2009, final interim rule for FY 2009 retained the more restrictive, status quo trip limits for GB winter flounder and white hake (i.e., 5,000 lb (2,272.7 kg)/trip; and 1,000 lb (454.5 kg)/DAS up to 10,000 lb (4,545.5 kg) /trip, respectively).

On April 9, 2009, the Council passed a motion that the Council request that NMFS further consider the trip limits for GB winter flounder and white hake as they relate to the allowable fishing mortality rates (of the final interim rule), and adjust the such limits accordingly. Pursuant to the motion, on April 13,

2009, the Council sent a letter to NMFS making that request.

In response to the Council's letter of April 13, 2009, NMFS initiated an analysis of the pertinent trip limits and discovered that an error had been made in the analysis of the final rule measures (*NMFS. Environmental Assessment–Secretarial Interim Action to Implement Measures to Reduce Overfishing in the Northeast Multispecies Fishery Complex. April 6, 2009*). Although the preferred alternative included the more restrictive trip limits for these two stocks, the trip limit analysis completed in the Environmental Assessment (EA) for this alternative had mistakenly not been updated from the proposed rule, and therefore represented the analysis of the more liberal trip limit for white hake and removal of the GB winter flounder trip limit. The impacts of the more restrictive measures are represented by the impacts of the No Action Alternative.

The underlying analytical basis for the interim action and an explanation of the specific objectives for each stock were explained in the final interim rule, and are not repeated here. Based on estimated fishing mortality rates in calendar year 2008, fishing mortality can be increased on GB winter flounder and white hake and still achieve the respective goals of Fmsy and Frebuild. The analysis of the Preferred Alternative in the EA indicates that the management measures, including the trip limits implemented by this action, would result in a 13–percent reduction in fishing mortality for GB winter flounder and a 17–percent reduction in fishing mortality for white hake. The impacts of the less restrictive trip limits are consistent with the goals of the interim action. Therefore, in consideration of the Council's request and the impacts, this rule removes the trip limit for GB winter flounder, and implements a white hake trip limit of 2,000 lb (909.1 kg)/DAS up to 10,000 lb (4,545.5 kg)/trip.

Classification

NMFS has determined that the management measures implemented by this final interim rule are necessary for the conservation and management of the NE multispecies fishery, and are consistent with the Magnuson-Stevens Act and other applicable laws. This final interim rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

This final rule does not contain policies with federalism or ''takings'' implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

An analysis of the impacts of the measures implemented by this rule on small entities were included in the Final Regulatory Flexibility Analysis of the interim final rule that implemented management measures for FY 2009 (74 FR 17030; April 13, 2009).

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA) finds it is unnecessary, impracticable, and contrary to the public interest to provide for additional prior notice and an opportunity for public comment. The substantive measure implemented by this action (modification of trip limits) was among measures proposed for FY 2009 in the proposed rule for the interim action and for which public comment was solicited during a 30-day period. The final interim action did not adopt the trip limit changes for these two stocks, and established a postpromulgation comment period of 60 days. The trip limit changes of this interim final rule are in response to a postpromulgation comment. Further public comment is unnecessary and impracticable, given the opportunity for public comment already provided for FY 2009 management measures, and the fact that further public comment would delay implementation and undermine the regulatory objective of providing for increased economic opportunity. Other changes implemented by this rule are minor, non-substantive changes that do not change operating practices in the fishery.

Pursuant to 5 U.S.C. 553(d)(1), the AA finds it is unnecessary, impracticable, and contrary to the public interest to provide for a 30-day delayed effectiveness, because this rule relieves a restriction. Specifically, the current regulations include a trip limit for GB winter flounder and a possession/trip limit for white hake. This interim final rule relieves restrictions by eliminating the GB winter flounder trip limit, and increasing the daily possession limit for white hake, and providing increased economic opportunity. A 30-day delay in the implementation of this rule would therefore delay the date vessels could take advantage of this economic opportunity. Such a delay would represent a 1-month reduction in fishing opportunity for these stocks and an economic loss, because fishing opportunities during the spring/summer portions of the fishing season are not equivalent to fishing opportunity later in the fishing season. Other changes implemented by this rule are minor, non-substantive changes that do not change operating practices in the fishery.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 1, 2009.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 648.14 [Amended]

■ 2. In § 648.14, paragraph (k)(13)(ii)(H) is suspended.

■ 3. In § 648.82, paragraph (k)(3) introductory text is added to read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(k) * * *

(3) *Application to lease NE multispecies DAS.* To lease Category A DAS, the eligible Lessor and Lessee vessel must submit a completed application form obtained from the Regional Administrator. The application must be signed by both Lessor and Lessee and be submitted to the Regional Office at least 45 days before the date on which the applicants desire to have the leased DAS effective. The Regional Administrator will notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time prior to the start of the fishing year or throughout the fishing year in question, up until the close of business on March 1. Eligible vessel owners may submit any number of lease applications throughout the application period, but any DAS may only be leased once during a fishing year.

* * * * *

■ 4. In § 648.85, paragraphs (b)(10)(iv)(D), (b)(10)(v)(C) and (D), and (b)(11)(vi)(D) are revised to read as follows:

§ 648.85 Special management programs.

* * * * *

(b) * * *

(10) * * *

(iv) * * *

(D) *Landing limits.* Unless otherwise specified in this paragraph (b)(10)(iv)(D), a NE multispecies vessel fishing in the Regular B DAS Program described in this paragraph (b)(10), and

fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip of any of the following species/stocks from the areas specified in paragraph (b)(10)(v) of this section: Cod, pollock, white hake, witch flounder, GB winter flounder, GB yellowtail flounder, and southern windowpane flounder; and may not land more than 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of CC/GOM or SNE/MA yellowtail flounder. In addition, trawl vessels that are required to fish with a haddock separator trawl or Ruhle trawl, as specified under paragraph (b)(10)(iv)(J) of this section, gillnet gear, and other gear that may be required in order to reduce catches of stocks of concern as described under paragraph (b)(10)(iv)(J) of this section, are restricted to the following trip limits: 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder (GOM or GB), windowpane flounder (south), and yellowtail flounder), combined; 500 lb (227 kg) of monkfish (whole weight); 500 lb (227 kg) of skates (whole weight); and zero possession of lobsters, ocean pout, SNE/MA winter flounder, and windowpane flounder (north), unless otherwise restricted by § 648.94(b)(3).

* * * * *

(v) * * *

(C) *CC/GOM yellowtail flounder stock area.* The CC/GOM yellowtail flounder stock area for the purposes of the Regular B DAS Program is the area defined by straight lines connecting the following points in the order stated:

CC/GOM YELLOWTAIL FLOUNDER STOCK AREA

Point	N. Lat.	W. Long.
CCGOM1	43°00′	[1]
CCGOM2	43°00′	70°00′
CCGOM3	42°30′	70°00′
CCGOM4	42°30′	69°30′
CCGOM5	41°30′	69°30′
CCGOM6	41°30′	69°00′
CCGOM7	41°00′	69°00′
CCGOM8	41°00′	69°30′
CCGOM9	41°30′	70°00′
CCGOM10	[2]	70°00′
CCGOM11	42°00′	[3]
CCGOM12	42°00′	[4]
CCGOM13	[3]	70°00′

[1] Intersection with the New Hampshire coastline.
[2] Intersection of the south-facing shoreline of Cape Cod, MA.
[3] Intersection with the east-facing shoreline of Cape Cod, MA.
[4] Intersection with the west-facing shoreline of Massachusetts.

(D) *SNE/MA yellowtail flounder stock area.* The SNE/MA stock area for the purposes of the Regular B DAS Program is the area bounded on the north, east, and south by straight lines connecting the following points in the order stated:

SNE/MA YELLOWTAIL FLOUNDER STOCK AREA

Point	N. Lat.	W. Long.
SNEMA1	40°00′	74° 00′
SNEMA2	40°00′	72°00′
SNEMA3	40°30′	72°00′
SNEMA4	40°30′	69°30′
SNEMA5	41°00′	69°30′
SNEMA6	41°00′	69°00′
SNEMA7	41°30′	69°00′
SNEMA8	41°30′	70°00′
SNEMA9	41°00′	70°00′
SNEMA10	41°00′	70°30′
SNEMA11	41°30′	70°30′
SNEMA12	[1]	72°00′
SNEMA13	[2]	72°00′
SNEMA14	[3]	73°00′
SNEMA15	40°30′	73°00′
SNEMA16	40°30′	74°00′
SNEMA17	40°00′	74°00′

[1] South-facing shoreline of Connecticut.
[2] North-facing shoreline of Long Island, New York.
[3] South-facing shoreline of Long Island, New York.

* * * * *

(11) * * *

(vi) * * *

(D) *Reporting requirements.* The owner or operator of a non-Sector vessel declared into the Closed Area I Hook Gear Haddock SAP must submit reports via VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished in the Closed Area I Hook Gear Haddock SAP Area. The reports must be submitted in 24–hr intervals for each day fished, beginning at 0000 hr local time and ending at 2400 hr local time. The reports must be submitted by 0900 hr local time of the day following fishing. The reports must include at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, pollock, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, pollock, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(11)(iv)(F) of this section.

* * * * *

■ 5. In § 648.86, paragraphs (e) and (j) are suspended, and paragraph (o) is added to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(o) *White hake.* Unless otherwise restricted under this part, a vessel issued NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions may only land up to 2,000 lb (907.2 kg) of white hake per DAS, or any part of a DAS, up to 10,000 lb (4,536 kg) per trip.

[FR Doc. E9–16050 Filed 7–2–09; 4:15 pm]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 09100091344–9056–02]

RIN 0648–XQ18

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2009 total allowable catch (TAC) of Pacific ocean perch in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 4, 2009, through 2400 hrs, A.l.t., December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Patty Britza, 907–586–7376.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson–Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2009 TAC of Pacific ocean perch in the Western Regulatory Area of the GOA is 3,713 metric tons (mt) as

established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2009 TAC of Pacific ocean perch in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,413 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific ocean perch in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 1, 2009.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 2, 2009.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–16049 Filed 7–2–09; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 129
Wednesday, July 8, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0622; Directorate Identifier 2009–CE–034–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Findings of corrosion, wear and cracks in the upper wing strut fittings on some PC–6 aircraft have been reported in the past. It is possible that the spherical bearing of the wing strut fittings installed in the underwing can be loose in the fitting or cannot rotate because of corrosion. In this condition, the joint cannot function as designed and fatigue cracks may then develop. Undetected cracks, wear and/or corrosion in this area could cause failure of the upper attachment fitting, leading to failure of the wing structure and subsequent loss of control of the aircraft.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by August 7, 2009.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4059; *fax:* (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0622; Directorate Identifier 2009–CE–034–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On September 13, 2007, we issued AD 2007–19–14, Amendment 39–15205 (72 FR 53920; September 21, 2007), which superseded AD 2007–15–09, Amendment 39–15138 (72 FR 41436; July 30, 2007), issued on July 19, 2007. AD 2007–15–09 superseded AD 2007–03–08, Amendment 39–14919 (72 FR 4635; February 1, 2007), issued January 24, 2007. Those ADs required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2007–19–14, Pilatus has developed new wing strut fittings that require repetitive visual and eddy current inspections. In addition, fatigue test results show the eddy current repetitive inspection interval for the old wing strut fittings can be extended to 1,100 hours time-in-service (TIS) or 12 calendar months, whichever occurs first.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2007–0241R3, dated May 6, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Findings of corrosion, wear and cracks in the upper wing strut fittings on some PC–6 aircraft have been reported in the past. It is possible that the spherical bearing of the wing strut fittings installed in the underwing can be loose in the fitting or cannot rotate because of corrosion. In this condition, the joint cannot function as designed and fatigue cracks may then develop. Undetected cracks, wear and/or corrosion in this area could cause failure of the upper attachment fitting, leading to failure of the wing structure and subsequent loss of control of the aircraft.

To address this problem, FOCA published AD TM–L Nr. 80.627–6/Index 72–2 and HB–2006–400 and EASA published AD 2007–0114 to require specific inspections and to obtain a fleet status. Since the issuance of AD 2007–0114, the reported data proved that it was necessary to establish and require repetitive inspections.

EASA published Emergency AD 2007–0241–E to extend the applicability and to require repetitive eddy current and visual inspections of the upper wing strut fitting for evidence of cracks, wear and/or corrosion and examination of the spherical bearing and replacement of cracked fittings. Collected data received in response to Emergency AD 2007–0241–E resulted in the issuance of EASA AD 2007–0241R1 that permitted

extending the intervals for the repetitive eddy current and visual inspections from 100 Flight Hours (FH) to 300 FH and from 150 Flight Cycles (FC) to 450 FC, respectively. In addition, oversize bolts were introduced by Pilatus PC–6 Service Bulletin (SB) 57–005 R1 and the fitting replacement procedure was adjusted accordingly.

Based on fatigue test results, EASA AD 2007–0241R2 was issued to extend the repetitive inspection interval to 1 100 FH or 12 calendar months, whichever occurs first, and to delete the related flight cycle intervals and the requirement for the ''Mild Corrosion Severity Zone''. In addition, some editorial changes have been made for reasons of standardization and readability.

Revision 3 of this AD refers to the latest revision of the PC–6 Aircraft Maintenance Manual (AMM) Chapter 5 limitations which includes the same repetitive inspection intervals and procedures already mandated in the revision 2 of AD 2007–0241. Besides the inspections, the latest revision of the PC–6 AMM contains the replacement procedures for the fittings.

Additionally, it is possible to replace the wing strut fitting with a new designed wing strut fitting. With this optional part replacement, in the repetitive inspection procedure the 1 100 FH interval is deleted so that only calendar defined intervals of inspections remain applicable.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Pilatus Aircraft Ltd. has issued Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, REV No. 2, dated May 19, 2008; and Chapter 57–00–02 of Pilatus Aircraft Ltd. Pilatus PC–6 Aircraft Maintenance, dated November 30, 2008 (referenced as revision 9 in EASA AD No.: 2007–0241R3). The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

We estimate that this proposed AD will affect 50 products of U.S. registry. We also estimate that it would take about 7 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $28,000, or $560 per product.

In addition, we estimate that any necessary follow-on actions would take about 30 work-hours and require parts costing $5,000, for a cost of $7,400 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15205 (72 FR 53920; September 21, 2007), and adding the following new AD:

Pilatus Aircraft Ltd.: Docket No. FAA–2009–0622; Directorate Identifier 2009–CE–034–AD.

Comments Due Date

(a) We must receive comments by August 7, 2009.

Affected ADs

(b) This AD supersedes AD 2007–19–14, Amendment 39–15205 (72 FR 53920; September 21, 2007).

Applicability

(c) This AD applies to Models PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 airplanes, manufacturer serial numbers (MSN) 101 through 999 and MSN 2001 through 2092, certificated in any category.

Note 1: These airplanes are also identified as Fairchild Republic Company PC–6 airplanes, Fairchild Industries PC–6 airplanes, Fairchild Heli Porter PC–6 airplanes, or Fairchild-Hiller Corporation PC–6 airplanes.

Subject

(d) Air Transport Association of America (ATA) Code 57: Wings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Findings of corrosion, wear and cracks in the upper wing strut fittings on some PC–6 aircraft have been reported in the past. It is possible that the spherical bearing of the wing strut fittings installed in the underwing can be loose in the fitting or cannot rotate because of corrosion. In this condition, the joint cannot function as designed and fatigue cracks may then develop. Undetected cracks, wear and/or corrosion in this area could cause failure of the upper attachment fitting, leading to failure of the wing structure and subsequent loss of control of the aircraft.

To address this problem, FOCA published AD TM–L Nr. 80.627–6/Index 72–2 and HB–2006–400 and EASA published AD 2007–0114 to require specific inspections and to obtain a fleet status. Since the issuance of AD 2007–0114, the reported data proved that it was necessary to establish and require repetitive inspections.

EASA published Emergency AD 2007–0241–E to extend the applicability and to require repetitive eddy current and visual inspections of the upper wing strut fitting for evidence of cracks, wear and/or corrosion and examination of the spherical bearing and replacement of cracked fittings. Collected data received in response to Emergency AD 2007–0241–E resulted in the issuance of EASA AD 2007–0241R1 that permitted extending the intervals for the repetitive eddy current and visual inspections from 100 Flight Hours (FH) to 300 FH and from 150 Flight Cycles (FC) to 450 FC, respectively. In addition, oversize bolts were introduced by Pilatus PC–6 Service Bulletin (SB) 57–005 R1 and the fitting replacement procedure was adjusted accordingly.

Based on fatigue test results, EASA AD 2007–0241R2 was issued to extend the repetitive inspection interval to 1 100 FH or 12 calendar months, whichever occurs first, and to delete the related flight cycle intervals and the requirement for the ''Mild Corrosion Severity Zone''. In addition, some editorial changes have been made for reasons of standardization and readability.

Revision 3 of this AD refers to the latest revision of the PC–6 Aircraft Maintenance Manual (AMM) Chapter 5 limitations which includes the same repetitive inspection intervals and procedures already mandated in the revision 2 of AD 2007–0241. Besides the inspections, the latest revision of the PC–6 AMM contains the replacement procedures for the fittings.

Additionally, it is possible to replace the wing strut fitting with a new designed wing strut fitting. With this optional part replacement, in the repetitive inspection procedure the 1 100 FH interval is deleted so that only calendar defined intervals of inspections remain applicable.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) *For airplanes that have not had both wing strut fittings replaced within the last 100 hours time-in-service (TIS) before September 26, 2007 (the effective date of AD 2007–19–14) or have not been inspected using an eddy current inspection method following Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–004, dated April 16, 2007, within the last 100 hours TIS before September 26, 2007 (the effective date of AD 2007–19–14):* Before further flight after September 26, 2007 (the effective date of AD 2007–19–14), visually inspect the upper wing strut fittings and examine the spherical bearings following the Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, REV No. 2, dated May 19, 2008.

(2) *For all airplanes:* Within 25 hours TIS after September 26, 2007 (the effective date of AD 2007–19–14), or within 30 days after September 26, 2007 (the effective date of AD 2007–19–14), whichever occurs first, visually and using eddy current methods, inspect the upper wing strut fittings and examine the spherical bearings following Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, REV No. 2, dated May 19, 2008.

(3) After doing the inspection specified in paragraph (f)(2) of this AD or replacing the upper wing strut fitting, repetitively do the following inspections:

(i) *For all airplanes:* At intervals not to exceed every 3 calendar months visually inspect the upper wing strut fittings and examine the spherical bearings following Chapter 57–00–02 of Pilatus Aircraft Ltd. Pilatus PC–6 Aircraft Maintenance Manual, dated November 30, 2008 (referenced as revision 9 in EASA AD No.: 2007–0241R3). For airplanes equipped with wing strut fitting part number (P/N) 6102.0041.00, P/N 111.35.06.055, P/N 111.35.06.056, P/N 111.35.06.184, P/N 111.35.06.185, or P/N 111.35.06.186, you may also do these inspections following Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, REV No. 2, dated May 19, 2008.

(ii) *For airplanes equipped with wing strut fitting P/N 6102.0041.00, P/N 111.35.06.055, P/N 111.35.06.056, P/N 111.35.06.184, P/N 111.35.06.185, or P/N 111.35.06.186:* At intervals not to exceed every 1,100 hours TIS or 12 calendar months, whichever occurs first, visually and using eddy current methods, inspect the upper wing strut fittings and examine the spherical bearings following Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, REV No. 2, dated May 19, 2008, or Chapter 57–00–02 of Pilatus Aircraft Ltd. Pilatus PC–6 Aircraft Maintenance Manual, dated November 30, 2008 (referenced as revision 9 in EASA AD No.: 2007–0241R3).

(iii) *For airplanes equipped with wing strut fitting P/N 111.35.06.193, P/N 111.35.06.194, or P/N 111.35.06.195:* At intervals not to exceed every 12 calendar months, visually and using eddy current methods, inspect the upper wing strut fittings and examine the spherical bearings following Chapter 57–00–02 of Pilatus Aircraft Ltd. Pilatus PC–6 Aircraft Maintenance Manual, dated November 30, 2008 (referenced as revision 9 in EASA AD No.: 2007–0241R3).

(4) You may also take ''unless already done'' credit for any inspection specified in paragraph (f)(1), (f)(2), or (f)(3) of this AD if done before the effective date of this AD following Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, dated August 30, 2007; or Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, REV No. 1, dated November 19, 2007.

(5) *For all airplanes:* If during any inspection required by paragraph (f)(1), (f)(2), or (f)(3) of this AD you find the following conditions, before further flight, replace the specified part following Chapter 57–00–02 of Pilatus Aircraft Ltd. Pilatus PC–6 Aircraft Maintenance Manual, dated November 30, 2008 (referenced as revision 9 in EASA AD No.: 2007–0241R3):

(i) Cracks in the upper wing strut fitting; or

(ii) The spherical bearing is not in conformity.

(6) *For all airplanes:* Replacement of one or both upper wing strut fitting(s) does not terminate the repetitive inspection specified in paragraph (f)(3) of this AD.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):*

(i) The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4059; *fax:* (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(ii) AMOCs approved for AD 2007–19–14 are not approved for this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2007–0241R3, dated May 6, 2009; Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, REV No. 2, dated May 19, 2008; Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–005, REV No. 1, dated November 19, 2007; Pilatus Aircraft Ltd. Pilatus PC–6

Service Bulletin No. 57–005, dated August 30, 2007; Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 57–004, dated April 16, 2007; and Chapter 57–00–02 of Pilatus Aircraft Ltd. Pilatus PC–6 Aircraft Maintenance Manual, dated November 30, 2008 (referenced as revision 9 in EASA AD No.: 2007–0241R3), for related information. Issued in Kansas City, Missouri, on July 1, 2009.

Scott A. Horn,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–16142 Filed 7–7–09; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 240

[Release No. 34–60218; File No. S7–12–09]

RIN 3235–AK31

Shareholder Approval of Executive Compensation of TARP Recipients

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing amendments to the proxy rules under the Securities Exchange Act of 1934 to set forth certain requirements for U.S. registrants subject to Section 111(e) of the Emergency Economic Stabilization Act of 2008. Section 111(e) of the Emergency Economic Stabilization Act of 2008 requires companies that have received financial assistance under the Troubled Asset Relief Program (''TARP'') to permit a separate shareholder advisory vote to approve the compensation of executives, as disclosed pursuant to the compensation disclosure rules of the Commission, during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding. The proposed amendments are intended to help implement this requirement by specifying and clarifying it in the context of the federal proxy rules.

DATES: Comments should be received on or before September 8, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–12–09 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–12–09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: John Harrington, Attorney-Adviser, or N. Sean Harrison, Special Counsel, Division of Corporation Finance, at (202) 551–3430, or Division of Corporation Finance, at (202) 551–3430, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are proposing a new Rule 14a–20 and amendments to Schedule 14A[1] under the Securities Exchange Act of 1934 (''Exchange Act'').[2]

I. Background

The American Recovery and Reinvestment Act of 2009 (''ARRA'') was enacted on February 17, 2009.[3] Section 7001 of the ARRA amended the executive compensation and corporate governance provisions of Section 111 of the Emergency Economic Stabilization Act of 2008 (''EESA'').[4] Section 111(e) of the EESA,[5] as amended, requires any entity that has received or will receive financial assistance under the Troubled Asset Relief Program (''TARP'') to ''permit a separate shareholder vote to approve the compensation of executives, as disclosed pursuant to the compensation disclosure rules of the Commission (which disclosure shall include the compensation discussion and analysis, the compensation tables, and any related material).'' [6] Companies that have received financial assistance under the TARP are required to provide this separate shareholder vote during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding.[7] The shareholder vote required by Section 111(e) of the EESA is not binding on the board of directors of a TARP recipient, and such vote will not be construed as overruling a board decision or as creating or implying any additional fiduciary duty by the board.[8] The vote also will not be construed to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.[9]

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[1] 17 CFR 240.14a–101.

[2] 15 U.S.C. 78a *et seq.*

[3] Pub. L. 111–5, Title II, 110 Stat. (2009).

[4] 12 U.S.C. 5221.

[5] Section 111(e) of the EESA, as amended, states—

(1) ANNUAL SHAREHOLDER APPROVAL OF EXECUTIVE COMPENSATION—Any proxy or consent or authorization for an annual or other meeting of the shareholders of any TARP recipient during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding shall permit a separate shareholder vote to approve the compensation of executives, as disclosed pursuant to the compensation disclosure rules of the Commission (which disclosure shall include the compensation discussion and analysis, the compensation tables, and any related material).

(2) NONBINDING VOTE—A shareholder vote described in paragraph (1) shall not be binding on the board of directors of a TARP recipient, and may not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board, nor shall such vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation.

(3) DEADLINE FOR RULEMAKING—Not later than 1 year after the date of enactment of the American Recovery and Reinvestment Act of 2009, the Commission shall issue any final rules and regulations required by this subsection.

[6] We do not believe this provision changes the Commission's rules for a smaller reporting company that is a TARP recipient under the EESA with respect to the compensation discussion and analysis (''CD&A'') disclosure. Our compensation disclosure rules, as set forth in Item 402 of Regulation S–K [17 CFR 229.402], permit smaller reporting companies to provide scaled disclosure that does not include CD&A.

[7] Section 111 of the EESA defines this period to not include any period during which the Federal Government ''only holds warrants to purchase common stock of the TARP recipient.'' *See* 12 U.S.C. 5221(a)(5).

[8] Section 111(e)(2) of the EESA [12 U.S.C. 5221(e)(2)].

[9] Rule 14a–8 under the Exchange Act will continue to apply to shareholder proposals that relate to executive compensation. Rule 14a–8 provides shareholders with an opportunity to place a proposal in a company's proxy materials for a vote at an annual or special meeting of shareholders. Under this rule, a company generally is required to include the proposal unless the shareholder has not complied with the rule's procedural requirements or the proposal falls within one of the rule's 13 substantive bases for exclusion. To date, the staff of

II. Discussion of the Proposed Amendments

We are proposing new Rule 14a–20 under the Exchange Act to help implement the requirement under Section 111(e)(1) of the EESA that ''TARP recipients'' under Section 111(a)(3) of the EESA [10] provide a separate shareholder vote to approve the compensation of the company's executives.[11] Under proposed Rule 14a–20, registrants that are TARP recipients would be required to provide this separate shareholder vote in proxies solicited during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding. Proposed Rule 14a–20 would clarify that the separate shareholder vote required by Section 111(e)(1) of the EESA would only be required on a proxy solicited for an annual (or special meeting in lieu of the annual) meeting of security holders for which proxies will be solicited for the election of directors.[12] We are proposing an instruction to new Rule 14a–20 to clarify that smaller reporting companies would not be required to provide a compensation discussion and analysis in order to comply with the requirements of Rule 14a–20.[13]

We are also proposing an amendment to Item 20 of Schedule 14A that would be applicable to registrants that are TARP recipients and are required to provide a separate shareholder vote on executive compensation pursuant to Section 111(e)(1) of the EESA and proposed Rule 14a–20. Pursuant to this amendment, such registrants would be required to disclose in the proxy statement that they are providing a separate shareholder vote on executive compensation pursuant to the requirements of the EESA, and to briefly explain the general effect of the vote, such as whether the vote is non-binding.[14] Under our current disclosure rules, a company is required to report the results of the vote in its periodic report for the period in which the vote is taken.[15] This includes the results of the vote required under the EESA and proposed Rule 14a–20. We are proposing in a separate release also considered by the Commission today to accelerate the filing schedule for reporting results of shareholder votes generally by moving the requirement from Forms 10–Q and 10–K to Form 8–K.[16] If that proposal is adopted, it would apply to reporting results of the vote required by Rule 14a–20.[17]

It is our intent that the proposed Rule 14a-20 and the proposed amendments to Schedule 14A afford registrants that are TARP recipients adequate flexibility to meet their obligations under Section 111(e) of the EESA. At the same time, we believe that the proposed amendments, by helping to implement the requirements of Section 111(e) of the EESA in our proxy rules, would provide clarity for registrants that are TARP recipients regarding how they must comply with their obligations under Section 111(e) of the EESA. We also believe that a discussion of the reason why the registrant is providing a separate shareholder vote on the compensation of executives and an explanation of the effect of that vote would provide investors with information that would help them to make informed voting decisions.

Rule 14a–6 under the Exchange Act generally requires registrants to file proxy statements in preliminary form at least ten calendar days before definitive proxy materials are first sent to shareholders, unless the items included for a shareholder vote in the proxy statement are limited to specified matters.[18] During the time before final proxy materials are filed, our staff has the opportunity to comment on the disclosures and registrants are able to incorporate the staff's comments in their final proxy materials. The matters that do not require filing of preliminary materials include various items that regularly arise at annual meetings, such as the election of directors, ratification of the selection of auditors, approval or ratification of certain employee benefits plans, and shareholder proposals under Rule 14a–8.

Absent an amendment to Rule 14a–6, a proxy statement that includes the vote on executive compensation required by Section 111(e) of EESA and proposed Rule 14a-20 must be filed in preliminary form. We are not proposing to amend Rule 14a–6 at this time to add the vote required for TARP recipients to the list of items that do not trigger a preliminary filing. In light of the early stage of the development of disclosures under these requirements and the special policy considerations relating to this shareholder vote for TARP recipients, we believe it is appropriate to provide our staff the opportunity to comment on the disclosure before final proxy materials are filed. However, as indicated below, we are requesting comment on this issue.

Request for Comment

We request and encourage any interested person to submit comments regarding the proposed amendments described above. In particular, we solicit comment on the following questions:

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the Division of Corporation Finance has considered two requests in which TARP recipients requested the staff's concurrence that, given the shareholder advisory vote provision in Section 111(e) of the EESA, the companies could rely on Rule 14a–8(i)(9) [17 CFR 240.14a–8(i)(9)] or Rule 14a–8(i)(10) [17 CFR 240.14a–8(i)(10)] to exclude from their proxy materials shareholder proposals that requested policies of holding annual shareholder advisory votes on executive compensation. The staff of the Division of Corporation Finance declined to concur with either request. *See* Bank of America Corp. (Mar. 11, 2009); CoBiz Financial Inc. (Mar. 25, 2009) (available at *http://www.sec.gov/divisions/corpfin/cf-noaction/2009_14a-8.shtml*).

[10] Section 111(a)(3) of the EESA defines TARP recipient as ''any entity that has received or will receive financial assistance under the financial assistance provided under the TARP.'' *See* 12 U.S.C. 5221(a)(3).

[11] Section 111(e)(3) of the EESA requires the Commission to issue any final rules required by Section 111(e) within one year after the enactment of the ARRA. *See* 12 U.S.C. 5221(e)(3).

[12] The Commission agrees with the view previously expressed by the Division of Corporation Finance that a separate shareholder vote on executive compensation is required only with respect to an annual meeting of shareholders for which proxies will be solicited for the election of directors or a special meeting in lieu of such annual meeting. *See* Compliance and Disclosure Interpretations: American Recovery and Reinvestment Act of 2009 (Updated February 26, 2009), Question 1, available at *http://www.sec.gov/divisions/corpfin/guidance/arrainterp.htm*. Although Section 111(e)(1) of the EESA refers to an annual ''or other meeting of the shareholders,'' the subsection is titled ''Annual Shareholder Approval of Executive Compensation.'' Proposed Rule 14a–20 is intended to result in TARP recipients conducting the required advisory vote annually in connection with the election of directors, in which case our rules call for disclosure of executive compensation.

[13] *See* note 6 above.

[14] We are not proposing to require registrants to use any specific language or form of resolution. However, as stated in Section 111(e)(1) of the EESA, the vote must be to approve ''the compensation of executives, as disclosed pursuant to the compensation disclosure rules of the Commission (which disclosure shall include the compensation discussion and analysis, the compensation tables, and any related material).'' We believe that a vote to approve a proposal on a different subject matter, such as a vote to approve only compensation policies and procedures, would not satisfy the requirements of Section 111(e)(1) of the EESA or proposed Rule 14a–20.

Likewise, a shareholder proposal that asks the company to adopt a policy providing for periodic, non-binding shareholder votes on executive compensation in the future would not satisfy the requirement of Section 111(e) of the EESA or proposed Rule 14a–20. Section 111(e) requires a vote to approve the compensation of executives. A vote to request a voting policy that would apply at future meetings would not satisfy the EESA or proposed Rule 14a–20.

[15] *See* Item 4 of Part II of Exchange Act Form 10–Q [17 CFR 249.308a] and Item 4 of Part I of Exchange Act Form 10–K [17 CFR 249.310].

[16] 17 CFR 249.308.

[17] In the Proxy Disclosure and Solicitation Enhancements Release, the Commission is proposing amendments that would require reporting companies to disclose on Form 8–K the results of a shareholder vote, and to file that information within four business days after the end of the meeting at which the vote was held.

[18] 17 CFR 240.14a–6(a).

• Should we include more specific requirements regarding the manner in which registrants that are TARP recipients should present the shareholder vote on executive compensation? For example, should we designate the specific language to be used and/or require TARP recipients to frame the shareholder vote to approve executive compensation in the form of a resolution?

• Should we require registrants that are TARP recipients to disclose the reasons why they are providing for a separate shareholder vote on executive compensation and an explanation of the effect of that vote, as proposed?

• Should we require any additional disclosures about TARP recipients or the requirements of Section 111(e) of the EESA to be included with the vote to approve executive compensation? If so, what disclosures should we consider?

• Should we require any additional disclosures to be included with a TARP recipient's compensation discussion and analysis or other disclosures provided under Item 402 of Regulation S–K?

• Should we clarify by instruction, as proposed, that smaller reporting companies that are TARP recipients are not required to include a compensation discussion and analysis in their proxy statements in order to comply with our proposed amendments?

• Should language be added to proposed Rule 14a–20 to indicate explicitly that, as required by Section 111(e) of the EESA, the separate shareholder vote on the compensation of executives would be a non-binding advisory vote, or is the statutory reference sufficient for this purpose?

• Should we amend Rule 14a–6(a) under the Exchange Act so that registrants that are TARP recipients are not required to file a preliminary proxy statement as a consequence of providing a separate shareholder vote on executive compensation?

III. Paperwork Reduction Act

A. Background

The proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[19] We are submitting the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[20] The title for the collection of information is:

''Schedule 14A'' (OMB Control No. 3235–0059).

[19] 44 U.S.C. 3501 *et seq.*

[20] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

Schedule 14A was adopted under the Exchange Act and sets forth the disclosure requirements for proxy statements filed by U.S. issuers to help shareholders make informed voting decisions. The hours and costs associated with preparing, filing and sending the form constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Compliance with the proposed amendments by affected U.S. issuers would be mandatory. Responses to the information collections would not be kept confidential and there would be no mandatory retention period for the information disclosed.

As discussed in more detail above, we are proposing a new Rule 14a–20 under the Exchange Act and an amendment to Item 20 of Schedule 14A. Rule 14a–20 would help implement the requirement under Section 111(e)(1) of the EESA to provide a separate shareholder vote to approve the compensation of executives. Pursuant to the proposed amendment to Item 20 of Schedule 14A, registrants required to provide a separate shareholder vote pursuant to new Rule 14a–20 would be required to disclose the EESA requirement to provide such a vote and the general effect of the vote.

B. Burden and Cost Estimates Related to the Proposed Amendments

We believe that the proposed Rule 14a–20 and amendments to Schedule 14A will result in only a modest increase in the burden and cost of preparing and filing a Schedule 14A because they will not cause TARP recipients to collect or disclose any significant additional information. Section 111(e) of the EESA already increased the burdens and costs for registrants that are TARP recipients by requiring a separate shareholder vote on executive compensation and already applied during the 2009 proxy season. Our proposed amendments address the EESA requirement in the context of the federal proxy rules, thereby creating only an incremental increase in the burdens and costs for such registrants. We believe the proposed amendments will remove uncertainty while still providing registrants that are TARP recipients adequate flexibility to comply with Section 111(e) of the EESA.

For purposes of this analysis, we estimate the burden of disclosing the general effect of the vote and otherwise ensuring conformity with the federal proxy rules when complying with Section 111(e)(1) of the EESA will increase by one hour per registrant that is a TARP recipient. We estimate there are approximately 275 registrants that are TARP recipients with outstanding obligations that would be subject to our proposed amendments.[21] Therefore, the total annual PRA burden attributable to the proposed rules is 275 hours. For proxy statements, consistent with our customary assumptions, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden is carried by outside professionals retained by the company to review corporate disclosure at an average cost of $400 per hour.[22] The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours. Based on the foregoing, we calculated the additional annual compliance burdens resulting from the proposed amendments at 206.5 hours (this is 75% of the total 275 hours in increased burden carried by the company internally) and $27,500 (this is 25% of the total increased hourly burden carried by outside professionals and reflected as a cost). The current total annual burden hours and cost of Schedule 14A approved by the OMB is 555,683 hours and $63,709,987. Giving effect to the incremental increases in burden hours and costs as a result of the proposed amendments, the total annual burden hours and cost of Schedule 14A would be 555,889.5 hours and $63,737,487.

C. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to:

• Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;

• Evaluate the accuracy of our estimate of the burden of the proposed collections of information;

• Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;

• Evaluate whether there are ways to minimize the burden of the collections

[21] Our staff made this estimate from publicly-available information about TARP recipients. The estimate is based on the number of TARP recipients that are subject to our proxy rules and that have not repaid their TARP obligations.

[22] We estimate an hourly cost of $400 per hour for the service of outside professionals based on our consultations with several registrants and law firms and other persons who regularly assist registrants in preparing and filing proxy statements and related disclosures with the Commission.

of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and

• Evaluate whether the proposed amendments will have any effects on any other collections of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–12–09. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7–12–09 and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE., Washington, DC 20549–0213. Because OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if OMB receives them within 30 days of publication.

IV. Cost-Benefit Analysis

We are sensitive to the costs and benefits of the proposed amendments. In this section, we examine the benefits and costs of our proposed amendments. We request that commenters provide views and supporting information as to the benefits and costs associated with the proposals. We seek estimates of these costs and benefits, as well as any costs and benefits not already identified.[23]

A. Benefits

We are proposing amendments to the federal proxy rules to help implement the requirement in Section 111(e)(1) of the EESA that TARP recipients provide a separate shareholder vote to approve the compensation of executives. Under the proposed amendments, this separate shareholder vote would be required when registrants that are TARP recipients solicit proxies during the period in which any obligation arising from financial assistance provided under the TARP remains outstanding, and the solicitation relates to an annual meeting (or a special meeting in lieu of an annual meeting) for which proxies will be solicited for the election of directors. Companies required to provide such a separate shareholder vote would also be required to disclose in their proxy statements the EESA requirement to provide such a vote, and to briefly explain the general effect of the vote.

We believe the proposed amendments will benefit registrants that are TARP recipients by clarifying how they must comply with the requirements of Section 111(e)(1) of the EESA in the context of the federal proxy rules. The proposed amendments eliminate uncertainty that may exist among TARP recipients and other market participants regarding what is necessary under the Commission's proxy rules when conducting a shareholder vote required under Section 111(e) of the EESA. In addition to these benefits, we believe the proposed amendments allow TARP recipients adequate flexibility under the proxy rules to comply with the requirements of the EESA. By providing clarity while maintaining adequate flexibility, we believe the proposed amendments could reduce the amount of management time and legal expenses necessary to ensure that registrants that are TARP recipients comply with their obligations under both the EESA and the federal proxy rules. This would benefit TARP recipients and their shareholders.

We believe the proposed amendments will benefit investors by resulting in clear disclosure about the requirements of Section 111(e)(1) of the EESA as applied to Exchange Act registrants. When a separate shareholder vote on the compensation of executives is required by the EESA, proposed Rule 14a–20 would specify and clarify that requirement in the context of the federal proxy rules. By doing so, we believe Rule 14a–20 would promote better compliance with the requirements of Section 111(e)(1) of the EESA when registrants that are TARP recipients conduct solicitations subject to our proxy rules. The proposed amendments to Schedule 14A would require disclosure about the EESA requirement to provide a separate shareholder vote and the general effects of such a vote. Together, the proposed amendments are intended to provide useful, comparable and consistent information to assist an informed voting decision when registrants that are TARP recipients present to investors the advisory vote on executive compensation required pursuant to Section 111(e)(1) of the EESA. The specification and clarification of the requirement in our proposed rule would also help provide certainty about the nature of the TARP recipient's responsibility to hold the advisory vote, making it easier for companies to comply.

B. Costs

We believe the proposed amendments would not add any significant costs to those already created by the requirements of Section 111(e)(1) of the EESA and our proxy rules. The proposed amendments are intended to help implement the existing substantive EESA requirement in the context of the federal proxy rules. While our proposed amendments to Schedule 14A would require certain disclosures not explicitly required by EESA, we believe any incremental costs imposed by our proposed amendments would be minimal. For purposes of the PRA, we estimate the total annual incremental cost of the amendments to be 275 hours. We request comment on the amount of any additional costs issuers may incur as a result of the proposed amendments.

V. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [24] we solicit data to determine whether the proposals constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

• An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);

• A major increase in costs or prices for consumers or individual industries; or

• Significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposed amendments on the U.S. economy on an annual basis, any potential increase in costs or prices for consumers or individual industries, and any potential effect on competition, investment or innovation. Commenters are requested to provide empirical data

[23] The cost-benefit analysis in this section addresses the costs and benefits of the proposed amendments. The analysis does not, however, address the costs and benefits of the requirement in Section 111(e)(1) of the EESA that TARP recipients conduct a separate shareholder vote on executive compensation. While the proposed amendments set forth the manner in which registrants that are TARP recipients would implement this requirement when complying with the federal proxy rules, such registrants are already subject to the provisions of Section 111(e)(1) of the EESA and thus we are only addressing the incremental costs and benefits of the proposed amendments.

[24] 5 U.S.C. 603.

and other factual support for their views if possible.

VI. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act [25] also requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, Section 3(f) [26] of the Exchange Act requires us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to also consider whether the action will promote efficiency, competition, and capital formation.

We believe the proposed amendments would benefit registrants that are TARP recipients and their shareholders by providing certainty regarding how registrants that are TARP recipients must comply with the EESA requirement to hold an advisory vote on executive compensation in the context of the federal proxy rules, while maintaining adequate flexibility to comply with this requirement. The certainty should promote efficiency. The proposed amendments also would help ensure that shareholders receive disclosure regarding the required vote and the nature of a registrant's responsibilities to hold the vote under the EESA. As discussed in greater detail above, we believe these benefits would be achieved without imposing any significant additional burdens on registrants that are TARP recipients. We do not anticipate any effect on competition or capital formation. We do believe the rules will make compliance with EESA more efficient.

We request comment on whether the proposed amendments, if adopted, would impose a burden on competition. We also request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

VII. Regulatory Flexibility Act Certification

The Commission hereby certifies pursuant to 5 U.S.C. 605(b), that the amendments contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. Rule 0–10 under the Exchange Act defines small entities for these purposes as those with total assets of $5 million or less on the last day of their most recent fiscal year.[27] The proposed amendments would only impact TARP recipients with a class of securities registered pursuant to Section 12 of the Exchange Act and thus subject to the federal proxy rules.[28] We believe no TARP recipients that are required to comply with our proxy rules are small entities. In addition, if any small entities become subject to our proposed amendments, we do not believe the proposed amendments would have a significant economic impact on them. Any small entity subject to our proposed amendments would already be subject to the requirements of Section 111(e)(1) of the EESA. Further, we do not believe the EESA requires ''smaller reporting companies'' to provide a compensation discussion and analysis. As discussed in greater detail above, we do not believe our proposed rules impose a significant additional cost. For these reasons, the proposed amendments should not have a significant economic impact on a substantial number of small entities.

We solicit written comments regarding this certification. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VIII. Statutory Authority and Text of the Proposed Amendments

The amendments described in this release are being proposed under the authority set forth in Section 111(e) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221(e)) and Sections 14(a) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(a) and 78w(a)).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of the Proposed Amendments

For the reasons set out in the preamble, the Commission proposes to amend title 17, chapter II, of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The general authority citation for Part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*, 18 U.S.C. 1350, and 12 U.S.C. 5221(e)(3), unless otherwise noted.

* * * * *

2. Add § 240.14a–20 to read as follows:

§ 240.14a–20 Shareholder Approval of Executive Compensation of TARP Recipients.

If a solicitation is made by a registrant that is a *TARP recipient,* as defined in section 111(a)(3) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221(a)(3)), during the period in which any obligation arising from financial assistance provided under the *TARP,* as defined in section 3(8) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5202(8)), remains outstanding and the solicitation relates to an annual (or special meeting in lieu of the annual) meeting of security holders for which proxies will be solicited for the election of directors, as required pursuant to section 111(e)(1) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221(e)(1)), the registrant shall provide a separate shareholder vote to approve the compensation of executives, as disclosed pursuant to Item 402 of Regulation S–K (§ 229.402 of this chapter), including the compensation discussion and analysis, the compensation tables, and any related material.

Note to § 240.14a–20: TARP recipients that are smaller reporting companies entitled to provide scaled disclosure pursuant to Item 402(l) of Regulation S–K are not required to include a compensation discussion and analysis in their proxy statements in order to comply with this section. In the case of these smaller reporting companies, the required vote must be to approve the compensation of executives as disclosed pursuant to Item 402(m) through (r) of Regulation S–K.

3. Amend § 240.14a–101 by adding a sentence at the end of Item 20 to read as follows:

§ 240.14a–101 Schedule 14A. Information required in Proxy Statement.

Schedule 14A Information

* * * * *

Item 20. Other proposed action. * * * Registrants required to provide a

[25] 15 U.S.C. 78w(a).

[26] 15 U.S.C. 78c(f).

[27] 17 CFR 240.0–10.

[28] *See* 17 CFR 240.14a-2.

separate shareholder vote pursuant to section 111(e)(1) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221(e)(1)) and § 240.14a–20 shall disclose that they are providing such a vote as required pursuant to the Emergency Economic Stabilization Act of 2008, and briefly explain the general effect of the vote.

* * * * *

July 1, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16037 Filed 7–7–09; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80, 85, 86, 94, 1027, 1033, 1039, 1042, 1043, 1045, 1048, 1051, 1054, 1060, 1065, and 1068

[EPA–HQ–OAR–2007–0121; FRL–8927–6]

RIN 2060–AO38

Public Hearing for the Category 3 Marine Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearings.

SUMMARY: The EPA is announcing a public hearing to be held for the proposed rule ''Control of Emissions from New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder'' (the proposed rule is hereinafter referred to as the ''Category 3 Marine Rule''), which will be published separately in the **Federal Register**. There will be two hearings, one held in New York, NY, on August 4, 2009, and one held in Long Beach, CA on August 6, 2009.

In a separate notice of proposed rulemaking, EPA is proposing emission standards for new marine diesel engines with per cylinder displacement at or above 30 liters (called Category 3 marine diesel engines) installed on U.S. vessels, under section 213 of the Clean Air Act (CAA or ''the Act''). The proposed engine standards are equivalent to the nitrogen oxides (NO_X) limits recently adopted in the amendments to Annex VI to the International Convention for the Prevention of Pollution from Ships (MARPOL Annex VI) and are based on the position advanced by the United States Government as part of those international negotiations. The near-term standards for newly-built engines would apply beginning in 2011. Long-term standards would begin in 2016 and are based on the application of high-efficiency aftertreatment technology. We are also proposing a change to our diesel fuel program that would forbid the production and sale of marine fuel oil above 1,000 ppm sulfur for use in the waters within the proposed U.S. ECA and internal U.S. waters and allow for the production and sale of 1,000 ppm sulfur fuel for use in Category 3 marine vessels.

The proposal is part of a coordinated strategy to ensure that all ships that affect U.S. air quality meet stringent NO_X and fuel sulfur requirements. In addition, on March 27, 2009, the U.S. Government forwarded a proposal to the International Maritime Organization (IMO) to amend MARPOL Annex VI to designate an Emission Control Area (ECA) off U.S. coasts. If this proposed amendment is not timely adopted by IMO, we intend to take supplemental action to control emissions from vessels affecting U.S. air quality.

The proposed regulations also include technical amendments to our motor vehicle and nonroad engine regulations. Many of these changes involve minor adjustments or corrections to our recently finalized rule for new nonroad spark-ignition engines, or adjustments to other regulatory provisions to align with this recently finalized rule. Our coordinated strategy also includes proposed regulations to implement MARPOL Annex VI pursuant to the Act to Prevent Pollution from Ships.

DATES: The public hearings will be held on Tuesday, August 4, 2009 in New York, NY, and on Thursday, August 6, 2009, in Long Beach, CA. If you would like to speak at a public hearing, please notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** at least ten days before the hearing. See **SUPPLEMENTARY INFORMATION** for other detailed information regarding the public hearings for the Category 3 Marine Rule.

ADDRESSES: The hearings will be held at the following two locations: New York Marriott Downtown, 85 West Street, New York, NY 10006; and Westin Long Beach, 333 East Ocean Boulevard, Long Beach, CA 90802. Written comments on the proposed rule may also be submitted to EPA electronically, by mail, by facsimile, or through hand delivery/courier. Please refer to the notice of proposed rulemaking for the addresses and detailed instructions for submitting written comments.

FOR FURTHER INFORMATION CONTACT: Amy Kopin, U.S. EPA, Office of Transportation and Air Quality, Assessment and Standards Division (ASD), Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4417; fax number: (734) 214–4050; e-mail address: *Kopin.Amy@epa.gov;* or Assessment and Standards Division Hotline, telephone number: (734) 214–4636.

SUPPLEMENTARY INFORMATION: The proposal for which EPA is holding the public hearing will be published separately in the **Federal Register**. A pre-publication copy of the notice of proposed rulemaking is available on the following Web site: *http://www.epa.gov/otaq/oceanvessels.htm.*

Public Hearings: The public hearings will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rule. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearings. Written comments must be received by the last day of the comment period, as specified in the proposal of the Category 3 Marine Rule.

The public hearings will be held on August 4, 2009 in New York, and August 6, 2009, in Long Beach, CA. These hearings will both start at 10 a.m. local time and continue until everyone has had a chance to speak. If you would like to speak at a public hearing, please notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** at least ten days before the hearing. Verbatim transcripts of the hearings and written statements will be included in the rulemaking docket.

How Can I Get Copies of This Document, the Proposed Rule, and Other Related Information?

The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2007–0121. When the proposed rule is published in the **Federal Register**, a complete set of documents related to the proposal will be available for public inspection at the EPA Docket Center, located at 1301 Constitution Avenue, NW., Room 3334, Washington, DC, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Documents are also available through the electronic docket system at *http://www.regulations.gov*. Please refer to the notice of proposed rulemaking for detailed information on accessing information related to the proposal.

The EPA has also developed a Web site for the proposed rule. A copy of the notice of proposed rulemaking (which is essentially the same as the proposal that will be published) was posted on the EPA Web site prior to publication in the **Federal Register**. The EPA Web site for the rulemaking, which includes information about the public hearings, can be found at: *http://www.epa.gov/otaq/oceanvessels.htm.*

Dated: June 25, 2009.

Margo T. Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. E9–16079 Filed 7–7–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–1062]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the following communities: the City of St. Louis, St. Charles and St. Louis counties in Missouri; and Madison, Monroe, and St. Clair counties in Illinois. The communities addressed by this rule were the subject of an act of Congress which required the Federal Emergency Management Agency (FEMA) to delay the statutory appeals process required under Section 1363 of the National Flood Insurance Act of 1968, until certain publication requirements were met for each of these communities.

The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before October 6, 2009.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1062, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes and seeks comment on the Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

Those communities affected by this proposed rule are the City of St. Louis, St. Charles and St. Louis counties in Missouri; and Madison, Monroe, and St. Clair counties in Illinois. The communities addressed by this rule were the subject of an act of Congress which required the Federal Emergency Management Agency (FEMA) to delay the statutory appeals process required under 1363 of the National Flood Insurance Act of 1968, until certain publication requirements were met for each of the included communities. Specifically, the legislation stated, ''Until such time as preliminary flood insurance rate maps initiated prior to October 1, 2008 are completed and released for public review, preliminary base flood elevations are published in the **Federal Register**, and the second required local newspaper publication of such base flood elevations is made for the City of St. Louis, St. Charles and St. Louis counties in Missouri, and Madison, Monroe, and St. Clair counties in Illinois, the Administration shall not begin the statutory appeals process in such areas required under 1383 of the National Flood Insurance Act of 1968.'' (Consolidated Security, Disaster Assistance, and Continuing Appropriations Act 2009, Pub. L. 110–329, Div. B, Sec. 10503, 122. Stat. 3574, 3593 (2008)). In accordance with the intent of the legislation, FEMA intends to initiate concurrent appeal periods for these Missouri and Illinois communities.

FEMA originally published BFEs for the affected Illinois communities in proposed rules in 2008. The proposed BFEs for Monroe and Madison counties published August 18, 2008, at 73 FR 48170. The proposed BFEs for St. Clair County published September 3, 2008, at 73 FR 51400. The proposed BFEs for Monroe, Madison, and St. Clair counties which published at 73 FR 48170 and 73 FR 51400 are withdrawn and replaced by the proposed BFEs set forth below in this rule. FEMA received no comments on the proposed rules published at 73 FR 48170 and 73 FR 51400. Only one minor change has been made in the proposed BFEs for these Illinois counties since the 2008 publications. In proposed rule 73 FR 48170 for Madison County, the existing BFE for the Mississippi River was listed as 403 feet using the North American Vertical Datum (NAVD). This was a typographical error and has been modified to reflect the correct existing BFE of 430 feet NAVD. This rule is the first publication of proposed BFEs for the affected Missouri counties.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental

impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified
City of St. Louis, Missouri					
Missouri	City of St. Louis	Mississippi River	Approximately 0.5 miles upstream from the Poplar Street, Bridge.	+427	+426
			Approximately 0.6 miles upstream from US Interstate 270 at the northern boundary of the City of St. Louis.	+434	+433

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of St. Louis
Maps are available for inspection at 1200 Market Street, Room 400, St. Louis, MO 63103.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Madison County, Illinois, and Incorporated Areas				
Cahokia Canal	Approximately 1,100 feet northeast of the intersection of Industrial Avenue and Cahokia Street, (City of Madison in St. Clair County).	None	+427	Unincorporated Areas of Madison County, City of Collinsville, City of Madison, Village of Pontoon Beach.
	Diversion with Judys Branch and Burdick Branch	None	+433	
Cahokia Creek	At confluence with Mississippi River	+436	+434	Unincorporated Areas of Madison County, Village of Hartford, Village of South Roxana.
	Approximately 0.5 mile downstream of State Route 255.	+436	+435	
Canteen Creek	Approximately 1.2 miles upstream of Collinsville Road	+426	+427	Unincorporated Areas of Madison County, City of Collinsville.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 900 feet upstream of confluence with Cahokia Creek.	None	+428	
Judys Branch	At confluence with Cahokia Canal	+416	+433	Unincorporated Areas of Madison County, Village of Glen Carbon, Village of Pontoon Beach.
	Approximately 0.7 mile upstream of State Route 159	None	+526	
Judys Branch Tributary 10	At confluence with Judys Branch	None	+506	Village of Glen Carbon.
	Approximately 475 feet downstream of Green Acres Road.	None	+507	
Judys Branch Tributary 5	At confluence with Judys Branch	None	+474	Village of Glen Carbon.
	Approximately 350 feet upstream of Barkwood Lane	None	+483	
Judys Branch Tributary 5a	At confluence with Judys Branch Tributary 5	None	+486	Village of Glen Carbon.
	Approximately 1,000 feet upstream of State Route 159.	None	+528	
Judys Branch Tributary 5b	At confluence with Judys Branch Tributary 5	None	+484	Unincorporated Areas of Madison County, Village of Maryville, Village of Glen Carbon.
	Approximately 0.6 mile upstream of State Route 159	None	+559	
Judys Branch Tributary 9	At confluence with Judys Branch	None	+495	Unincorporated Areas of Madison County, Village of Glen Carbon.
	Approximately 300 feet upstream of E Ingle Drive	None	+497	
Judys Branch Tributary 9a	At confluence with Judys Branch Tributary 9	None	+499	Unincorporated Areas of Madison County, Village of Glen Carbon.
	Approximately 150 feet upstream of Ash Road	None	+517	
Judys Branch Tributary 9b	At confluence with Judys Branch Tributary 9	None	+499	Unincorporated Areas of Madison County.
	Approximately 750 feet east of Harvest Court	None	+508	
Judys Creek	At confluence with Judys Branch	None	+457	Unincorporated Areas of Madison County, Village of Glen Carbon.
	Approximately 0.9 mile upstream of Norfolk and Western Railway.	None	+523	
Judys Creek Tributary B	At confluence with Judys Creek	None	+491	Unincorporated Areas of Madison County, Village of Glen Carbon.
	Approximately 275 feet downstream of Timberwolfe Drive.	None	+508	
Laurel Branch	At confluence with Lindenthal Creek	+490	+486	Unincorporated Areas of Madison County, City of Highland.
	Approximately 800 feet southwest of the intersection of 13th Street, and Laurel Street.	None	+508	
Laurel Branch Tributary 1	At confluence with Laurel Branch	None	+497	Unincorporated Areas of Madison County, City of Highland.
	Approximately 800 feet upstream of Willow Creek Drive.	None	+531	
Lindenthal Creek	Upstream side of Iberg Road	None	+474	Unincorporated Areas of Madison County, City of Highland.
	Downstream side of Sportsman Road	None	+530	
Lindenthal Creek Tributary 1	At confluence with Lindenthal Creek	None	+529	Unincorporated Areas of Madison County, City of Highland.
	Approximately 1,300 feet upstream of Troxler Avenue	None	+536	
Lindenthal Creek Tributary 2	At confluence with Lindenthal Creek Tributary 1	None	+531	Unincorporated Areas of Madison County, City of Highland.
	Approximately 400 feet upstream of U.S. Highway 40	None	+540	
Lindenthal Creek Tributary 3	At confluence with Lindenthal Creek Tributary 2	None	+531	Unincorporated Areas of Madison County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 1,100 feet upstream of Confluence with Lindenthal Creek Tributary 2.	None	+531	
Lindenthal Creek Tributary 4	At confluence with Lindenthal Creek Tributary 1	None	+531	City of Highland.
	Approximately 300 feet south of Troxler Avenue	None	+535	
Mississippi River	Near intersection of Schoenberger Creek No. 1 and I–55 in City of Madison (in St. Clair County).	+430	+427	Unincorporated Areas of Madison County, City of Alton, City of Collinsville, City of Edwardsville, City of Granite City, City of Madison, City of Venice, City of Wood River, Village of East Alton, Village of Glen Carbon, Village of Godfrey, Village of Hartford, Village of Pontoon Beach, Village of Roxana, Village of South Roxana.
	Madison County/Jersey County corporate limits	+438	+437	
Mooney Creek	Upstream side of Marine Road	+476	+480	Unincorporated Areas of Madison County, City of Edwardsville.
	Downstream side of Goshen Road	None	+525	
Mooney Creek Tributary 1	At confluence with Mooney Creek	None	+515	City of Edwardsville.
	Approximately 800 feet upstream of Stonebrooke Drive.	None	+520	
Mooney Creek Tributary 2	At confluence with Mooney Creek	None	+520	City of Edwardsville.
	Approximately 1,300 feet downstream of Gusewelle Road.	None	+538	
Smith Lake Tributary	Approximately 0.5 mile downstream of E Edwardsville Road.	None	+434	Unincorporated Areas of Madison County, City of Wood River, Village of Roxana.
	Approximately 500 feet downstream of Lakin Blvd.	+433	+434	
Wood River	At confluence with Mississippi River	+437	+435	Unincorporated Areas of Madison County, City of Alton, Village of East Alton.
	Upstream side of Chicago Missouri & Western Railroad.	+437	+435	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Alton
Maps are available for inspection at 101 East Third Street, Alton, IL 62002.

City of Collinsville
Maps are available for inspection at 125 South Center Street, Collinsville, IL 62234.

City of Edwardsville
Maps are available for inspection at 118 Hillsboro Avenue, Edwardsville, IL 62025.

City of Granite City
Maps are available for inspection at 2000 Edison Avenue, Granite City, IL 62040.

City of Highland
Maps are available for inspection at 1115 Broadway, Highland, IL 62249–0218.

City of Madison
Maps are available for inspection at 615 Madison Avenue, Madison, IL 62060.

City of Venice

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Maps are available for inspection at 1030 Market Street, Venice, IL 62090.

City of Wood River

Maps are available for inspection at 111 North Wood River Avenue, Wood River, IL 62095.

Unincorporated Areas of Madison County

Maps are available for inspection at 157 North Main Street, Edwardsville, IL 62025–1964.

Village of East Alton

Maps are available for inspection at 119 West Main Street, East Alton, IL 62024.

Village of Glen Carbon

Maps are available for inspection at 151 North Main Street, Glen Carbon, IL 62034.

Village of Godfrey

Maps are available for inspection at 6810 Godfrey Road, Godfrey, IL 62035.

Village of Hartford

Maps are available for inspection at 507 North Delmar Avenue, Hartford, IL 62048.

Village of Maryville

Maps are available for inspection at 2520 North Center Street, Maryville, IL 62062.

Village of Pontoon Beach

Maps are available for inspection at 1 Regency Parkway, Pontoon Beach, IL 62040.

Village of Roxana

Maps are available for inspection at 400 South Central Avenue, Roxana, IL 62084.

Village of South Roxana

Maps are available for inspection at 211 Sinclair Avenue, South Roxana, IL 62087.

Monroe County, Illinois, and Incorporated Areas

Carr Creek	At confluence with the Mississippi River	+420	+418	Unincorporated Areas of Monroe County.
	Just downstream of Bluff Road	+420	+418	
Kaskaskia River	Approximately 700 feet upstream of Anna Lane extended.	+395	+392	Unincorporated Areas of Monroe County.
	Approximately 1,000 feet below Peacock Site Road extended.	+395	+393	
Mississippi River	Approximately 1,500 feet upstream of DuFrenne Lane	+401	+400	City of Columbia, Unincorporated Areas of Monroe County, Village of Fults, Village of Valmeyer.
	Approximately 1.8 miles upstream of the Interstate 255 Bridge.	+421	+420	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

∧ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

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ADDRESSES

City of Columbia

Maps are available for inspection at City Hall, 208 South Rapp Avenue, Columbia, IL 62236.

Unincorporated Areas of Monroe County

Maps are available for inspection at the Monroe County Courthouse, 100 South Main Street, Waterloo, IL 62298.

Village of Fults

Maps are available for inspection at the Fults Village Hall, 160 Main Street, Fults, IL 62244.

St. Clair County, Illinois, and Incorporated Areas

Catawba Creek	At confluence with Richland Creek	+497	+493	City of Belleville.
	Approximately 570 feet downstream of Catawba Avenue.	+497	+496	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Douglas Creek	At confluence with Richland Creek	+433	+432	Unincorporated Areas of St. Clair County.
	Approximately 600 feet upstream of the confluence with Richland Creek.	+433	+432	
Kaskaskia River	At County Boundary with Randolph County	+395	+392	Unincorporated Areas of St. Clair County, Village of New Athens.
	Approximately 8,000 feet upstream of Illinois Central Railroad.	+395	+394	
Little Silver Creek	At confluence with Silver Creek	+429	+428	Unincorporated Areas of St. Clair County.
	Approximately 7,900 feet upstream of Interstate Highway 62 Westbound.	+432	+431	
Mississippi River	Approximately 7,390 feet downstream of Southern County Boundary with Monroe County.	None	+420	City of Centreville, City of East St. Louis, Unincorporated Areas of St. Clair County, Village of Alorton, Village of Brooklyn, Village of Cahokia, Village of Caseyville, Village of Dupo, Village of East Carondelet, Village of Fairmont City, Village of Sauget, Village of Washington Park.
	Approximately 4,435 feet upstream of Northern County Boundary with Madison County.	None	+429	
Northwest Tributary to Ogles Creek.	At confluence with Unnamed Tributary to Ogles Creek	+534	+531	City of O'Fallon.
	Approximately 110 feet upstream of the confluence with Unnamed Tributary to Ogles Creek.	+534	+533	
Prairie Du Pont Diversion Channel.	At confluence with Mississippi River	+423	+422	Unincorporated Areas of St. Clair County.
	Approximately 1,200 feet upstream of confluence with Mississippi River.	+423	+422	
Richland Creek	Approximately 3,000 feet downstream of Schluetter-Germaine Road.	+450	+449	City of Belleville, City of Ofallon, Unincorporated Areas of St. Clair County, Village of Shiloh, Village of Smithton, Village of Swansea.
	Approximately 1,090 feet upstream of North Green Mount Road.	None	+530	
Silver Creek	At confluence with Kaskaskia River	+395	+394	Unincorporated Areas of St. Clair County.
	Approximately 250 feet downstream of Five Forks Road.	+395	+394	
Wolf Branch	At confluence with Richland Creek	+500	+496	Village of Swansea.
	Approximately 30 feet downstream of Morgan Street	+500	+499	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Belleville

Maps are available for inspection at City Hall, Department of Economic Development and Planning, 101 South Illinois Street, Belleville, IL 62220.

City of Centreville

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Maps are available for inspection at City Hall, 5800 Bond Avenue, Centreville, IL 62207.

City of East St. Louis
Maps are available for inspection at City Hall, 301 River Park Drive, East St. Louis, IL 62201.

City of O'Fallon
Maps are available for inspection at City Hall, 255 South Lincoln Street, O'Fallon, IL 62269.

Unincorporated Areas of St. Clair County
Maps are available for inspection at the County Courthouse, 10 Public Square, 2nd Floor, Belleville, IL 62220.

Village of Alorton
Maps are available for inspection at the Village Hall, 4821 Bond Avenue, Alorton, IL 62207.

Village of Brooklyn
Maps are available for inspection at the Village Hall, 312 South 5th Street, Lovejoy, IL 62059.

Village of Cahokia
Maps are available for inspection at the Village of Cahokia Annex Building, Department of Code Enforcement, 201 West 4th Street, Cahokia, IL 62206.

Village of Caseyville
Maps are available for inspection at the Village Hall, 909 South Main Street, Caseyville, IL 62232.

Village of Dupo
Maps are available for inspection at the Village Hall, 100 North 2nd Street, Dupo, IL 62239.

Village of East Carondelet
Maps are available for inspection at the Village Hall, 950 State Street, East Carondelet, IL 62240.

Village of Fairmont City
Maps are available for inspection at the Village Hall, 2601 North 41st Street, Fairmont City, IL 62201.

Village of New Athens
Maps are available for inspection at the Village Hall, 905 Spotsylvania Avenue, New Athens, IL 62264.

Village of Sauget
Maps are available for inspection at the Village Hall, 2897 Falling Springs Road, Sauget, IL 62206.

Village of Shiloh
Maps are available for inspection at the Village Hall, 1 Park Drive, Shiloh, IL 62269.

Village of Smithton
Maps are available for inspection at the Village Hall, 101 South Main Street, Smithton, IL 62285.

Village of Swansea
Maps are available for inspection at the Government Center, 1400 North Illinois Street, Swansea, IL 62226.

Village of Washington Park
Maps are available for inspection at the Village Hall, 5218 North Park Drive, Washington Park, IL 62204.

St. Charles County, Missouri, and Incorporated Areas

Blanchette Creek (Backwater from Missouri River).	Just downstream of Katy Trail/Abandoned Railroad	+454	+455	Unincorporated Areas of St. Charles County, City of St. Charles.
	At the confluence with the Missouri River	+454	+455	
Crystal Springs Creek (Backwater from Missouri River).	At the confluence with the Missouri River	+456	+457	Unincorporated Areas of St. Charles County, City of St. Charles.
	Approximately 871 feet upstream of South River Road.	+456	+457	
Duckett Creek (Overflow from Missouri River).	At the confluence with the Missouri River	+461	+462	Unincorporated Areas of St. Charles County.
	Approximately 0.5 miles upstream of Jungs Station Road.	+462	+463	
Femme Osage Creek (Backwater from Missouri River).	Approximately 0.4 miles downstream of State Highway 94.	+474	+476	Unincorporated Areas of St. Charles County.
	Approximately 1.4 miles downstream of Defiance Road.	+475	+476	
Mississippi River	At the St. Charles County, Missouri/St. Louis County, Missouri/Madison County, Illinois county boundary, approximately 6.2 miles downstream of Melvin Price Lock and Dam.	+436	+434	Unincorporated Areas of St. Charles County, City of O'Fallon, City of Portage Des Sioux, City of St. Charles, City of St. Paul, City of St. Peters, Town of West Alton.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	At the St. Charles County/Lincoln County boundary, approximately 3.0 miles upstream of confluence with Peruue Creek.	+445	+444	
Missouri River	At the St. Charles County, Missouri/St. Louis County, Missouri/Madison County, Illinois county boundary, approximately 7.4 miles downstream of the Lewis Bridge.	+436	+434	Unincorporated Areas of St. Charles County, City of St. Charles, City of Weldon Spring, Town of West Alton, Village of Augusta.
	Near the St. Charles County/Warren County boundary, approximately 22.3 miles upstream of the Daniel Boone Bridge.	+486	+492	
Taylor Branch (Backwater from Missouri River).	At the confluence with the Missouri River	+458	+460	Unincorporated Areas of St. Charles County, City of St. Charles.
	Approximately 0.6 miles upstream of South River Road.	+458	+460	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of O'Fallon
Maps are available for inspection at 100 North Main Street, O'Fallon, MO 63366.

City of Portage Des Sioux
Maps are available for inspection at 201 North 2nd Street, Room 420, St. Charles, MO 63301.

City of St. Charles
Maps are available for inspection at 200 North 2nd Street, St. Charles, MO 63301.

City of St. Paul
Maps are available for inspection at 2300 St. Paul Road, St. Paul, MO 63366.

City of St. Peters
Maps are available for inspection at 1 St. Peters Centre Boulevard, St. Peters, MO 63376.

City of Weldon Spring
Maps are available for inspection at 5401 Independence Road, Weldon Springs, MO 63304.

Town of West Alton
Maps are available for inspection at 201 North Second Street, Room 420, St. Charles, MO 63301.

Unincorporated Areas of St. Charles County
Maps are available for inspection at 201 North Second Street, Room 420, St. Charles, MO 63301.

Village of Augusta
Maps are available for inspection at 201 North Second Street, Room 420, St. Charles, MO 63301.

St. Louis County, Missouri, and Incorporated Areas

Ball Creek	Approximately 450 feet upstream of I–70	None	+523	City of Normandy.
Bonhomme Creek (Backwater from the Missouri River).	At the confluence with Caulks Creek	+463	+465	City of Chesterfield.
	Approximately 1,300 feet upstream of Chesterfield Airport Road.	+464	+465	
Coldwater Creek	Approximately 400 feet downstream of Elsa Avenue	None	+554	City of Woodson Terrace.
	Just upstream of Isolda Avenue	None	+557	
Creve Coeur Creek (Overflow from the Missouri River).	Approximately 1.3 miles downstream of Creve Coeur Mill Road.	+460	+461	City of Chesterfield, City of Maryland Heights.
	Just upstream of Creve Coeur Mill Road	+462	+463	
Dellwood Creek	Approximately 900 feet upstream of Bon Oak Drive	None	+485	City of Dellwood.
	Approximately 1,450 feet upstream of Bon Oak Drive	None	+487	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Engelholm Creek	Approximately 450 feet downstream of Bartmer Avenue.	None	+498	City of University City.
	Just upstream of Bartmer Avenue	None	+502	
Fee Fee Creek (Backwater from the Missouri River).	Downstream of Richard Farm Road	+457	+458	Village of Champ, City of Maryland Heights.
	Just upstream of Creve Coeur Mill Road	+457	+458	
Grand Glaize East Creek	Approximately 1,200 feet upstream of Barrett Station Road.	None	+472	City of Des Peres.
Lemay Creek (Backwater from the Mississippi River).	Approximately 700 feet upstream of Krumm Road	+417	+416	Unincorporated Areas of St. Louis County.
	Approximately 2,000 feet upstream of Krumm Road	+417	+416	
Maline Creek (Backwater from the Mississippi River).	Approximately 0.5 miles downstream of St Cyr Road	+433	+431	City of Bellefontaine Neighbors, Village of Riverview.
	Approximately 1,300 feet downstream of St Cyr Road	+433	+431	
Mattese Creek (Backwater from the Mississippi River).	At the confluence with the Mississippi River	+417	+415	Unincorporated Areas of St. Louis County.
	Just downstream of Old Baumgartner Road	+417	+415	
Meramec River (Backwater from the Mississippi River).	At the confluence with the Mississippi River	+417	+415	Unincorporated Areas of St. Louis County.
	Approximately 2,000 feet upstream of Lemay Ferry Road.	+417	+415	
Mississippi River Lower Reach.	At the confluence with the Meramec River	+417	+415	Unincorporated Areas of St. Louis County.
	Approximately 1.0 mile upstream of Interstate 255	+421	+420	
Mississippi River Upper Reach.	Approximately 3.9 miles downstream of confluence with the Missouri River.	+434	+433	Unincorporated Areas of St. Louis County.
	At confluence with the Missouri River	+435	+434	
Missouri River	At confluence with the Mississippi River	+435	+434	Unincorporated Areas of St. Louis County, City of Bridgeton, City of Chesterfield, City of Florissant, City of Hazelwood, City of Maryland Heights, Village of Champ.
	Approximately 5.8 miles upstream of Interstate 64	+474	+476	
Watkins Creek (Backwater from the Mississippi River).	At the confluence with the Mississippi River	+434	+433	Unincorporated Areas of St. Louis County.
	Approximately 1,250 feet upstream of Coal Bank Road.	+434	+433	
Wildhorse Creek (Backwater from the Missouri River).	Just downstream of Centaur Road	+472	+473	City of Wildwood.
	Approximately 0.6 miles downstream of Wild Horse Creek Road.	+472	+473	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Bellefontaine Neighbors
Maps are available for inspection at 9641 Bellefontaine Road, Bellefontaine Neighbors, MO 63137.

City of Bridgeton
Maps are available for inspection at 11955 Natural Bridge Road, Bridgeton, MO 63044.

City of Chesterfield
Maps are available for inspection at 690 Chesterfield Parkway West, Chesterfield, MO 63017.

City of Dellwood
Maps are available for inspection at 1415 Chambers Road, Dellwood, MO 63135.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

City of Des Peres
Maps are available for inspection at 12325 Manchester Road, Des Peres, MO 63131.
City of Florissant
Maps are available for inspection at 955 Rue Saint Francois Street, Florissant, MO 63031.
City of Hazelwood
Maps are available for inspection at 415 Elm Grove Lane, Hazelwood, MO 63042.
City of Maryland Heights
Maps are available for inspection at 11911 Dorsett Road, Maryland Heights, MO 63043.
City of Normandy
Maps are available for inspection at 7700 Natural Bridge Road, Normandy, MO 63121.
City of University City
Maps are available for inspection at 6801 Delmar Boulevard, University City, MO 63130.
City of Wildwood
Maps are available for inspection at 183 Plaza Drive, Wildwood, MO 63040.
City of Woodson Terrace
Maps are available for inspection at 9351 Guthrie Avenue, Woodson Terrace, MO 63134.
Unincorporated Areas of St. Louis County
Maps are available for inspection at 121 South Meramec Avenue, Clayton, MO 63105.
Village of Champ
Maps are available for inspection at 121 South Meramec Avenue, Clayton, MO 63105.
Village of Riverview
Maps are available for inspection at 9699 Lilac Drive, Riverview, MO 63137.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 1, 2009.

Deborah S. Ingram,

Acting Deputy Assistant Administrator for Mitigation, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E9–16085 Filed 7–7–09; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1431; MB Docket No. 09–110; RM–11542]

Television Broadcasting Services; Santa Fe, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by The Regents of the University of New Mexico (''the University''), the licensee of station KNMD–DT, DTV channel *9, Santa Fe, New Mexico. The University requests the substitution of DTV channel *8 for channel *9 at Santa Fe.

DATES: Comments must be filed on or before July 23, 2009, and reply comments on or before August 3, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Margaret L. Miller, Esq., Dow Lohnes PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, *Joyce.Bernstein@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MB Docket No. 09–110, adopted June 25, 2009, and released June 26, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for

rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under New Mexico, is amended by adding DTV channel *8 and removing DTV channel *9 at Santa Fe.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–16089 Filed 7–7–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1432; MB Docket No. 09–111; RM–11541]

Television Broadcasting Services; Colorado Springs, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Gray Television Licensee, LLC (''Gray''), the licensee of station KKTV(TV), DTV channel 10, Colorado Springs, Colorado. Gray requests the substitution of DTV channel 49 for channel 10 at Colorado Springs.

DATES: Comments must be filed on or before July 23, 2009, and reply comments on or before August 3, 2009.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: John M. Burgett, Esq., Wiley Rein LLP, 1776 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, *Joyce.Bernstein@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 09–11, adopted June 25, 2009, and released June 26, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622(i) [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Colorado, is amended by adding DTV channel 49 and removing DTV channel 10 at Colorado Springs.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–16128 Filed 7–7–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R1-ES-2009-0036; 92210-1111-0000-B2]

RIN 1018-AV47

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Flying Earwig Hawaiian Damselfly (*Megalagrion nesiotes*) and Pacific Hawaiian Damselfly (*M. pacificum*) Throughout Their Ranges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list two species of Hawaiian damselflies, the flying earwig Hawaiian damselfly (*Megalagrion nesiotes*) and the Pacific Hawaiian damselfly (*M. pacificum*), as endangered under the Endangered Species Act of 1973, as amended (Act). If we finalize this rule as proposed, it would extend the Act's protections to these species. We have determined that critical habitat for these two Hawaiian damselflies is prudent, but not determinable at this time.

DATES: We will accept comments received on or before September 8, 2009. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by August 24, 2009.

ADDRESSES: You may submit comments by one of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments to Docket No. FWS-R1-ES-2009-0036.

• U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R1-ES-2009-0036; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Gina Shultz, Deputy Field Supervisor, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Box 50088, Honolulu, HI 96850; telephone 808-792-9400; facsimile 808-792-9581. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning threats (or lack thereof) to these species and regulations that may be addressing those threats;

(2) Additional information concerning the range, distribution, and population sizes of these species, including the locations of any additional populations of these species;

(3) Any information on the biological or ecological requirements of these species;

(4) Current or planned activities in the areas occupied by these species and their possible impacts on these species;

(5) Which physical and biological factors are essential to the conservation of each species and whether those features may require special management considerations or protections;

(6) Which specific areas area essential to the conservation of each species; and

(7) The reasons why any areas should or should not be designated as critical habitat as provided by section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether the benefits of designation would outweigh the threats to the species that designation could cause, such that the designation of critical habitat is prudent.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection at *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of the proposed rule by mail from the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**) or by visiting the *Federal eRulemaking Portal* at *http://www.regulations.gov*.

Background

Previous Federal Actions

The candidate status of each of the two damselfly species proposed here for listing, the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly, was most recently reassessed and affirmed in the December 6, 2007, Notice of Review of Native Species that are Candidates for Listing as Endangered or Threatened (CNOR) (72 FR 69034). Candidate species are those taxa for which the Service has sufficient information on their biological status and threats to propose them for listing under the Act, but for which the development of a listing regulation has been precluded by other higher priority listing activities.

Both the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly were first listed as candidate species on May 22, 1984 (49 FR 21664). The flying earwig Hawaiian damselfly was listed as a Category 3A (C3A) species, while the Pacific Hawaiian damselfly was listed as a Category 2 (C2) species. The flying earwig was removed from the candidate list on November 21, 1991 (56 FR 58804), whereas the Pacific Hawaiian damselfly retained its status as a C2 species. On November 15, 1994 (59 FR 58982), the flying earwig Hawaiian damselfly was added back to the candidate list, this time as a C2 species, and the Pacific Hawaiian damselfly was reclassified as a Category 1 species. In the Candidate Notice of Review (CNOR) published on February 28, 1996, we announced a revised list of plant and animal taxa that were regarded as candidates for possible addition to the Lists of Threatened and Endangered Wildlife and Plants (61 FR 7595). This revision also included a new ranking system, whereby each candidate species was assigned a Listing Priority Number (LPN) from 1 to 12. Both the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly were assigned an LPN of 2 on February 28, 1996 (61 FR 7595).

On May 4, 2004, the Center for Biological Diversity petitioned the Secretary of the Interior to list 225 species of plants and animals that were already candidates, including these two Hawaiian damselfly species, as endangered or threatened under the provisions of the Act. In our annual CNOR, dated May 11, 2005 (70 FR 24870), we retained a listing priority number of 2 for both of these species in accordance with our priority guidance published on September 21, 1983 (48 FR 43098). A listing priority number of 2 reflects threats that are both imminent and high in magnitude, as well as the taxonomic classification of each of these two Hawaiian damselflies as distinct species. At the time, we determined that publication of a proposed rule to list these species was precluded by our work on higher priority listing actions. Since then, we have published our annual findings on the May 4, 2004, petition (including our findings on these two candidate species) in the CNORs dated September 12, 2006 (71 FR 53756), December 6, 2007 (72 FR 69034), and December 10, 2008 (73 FR 75176).

In Fiscal year 2007, we determined that funding was available to initiate

work on listing determinations for these two species and that work on listing determinations was no longer precluded by higher priority actions. As such, this proposal constitutes our proposed listing determination for these two species.

Species Information

The Hawaiian Islands are well-known for several spectacular evolutionary radiations resulting in a unique insect fauna found nowhere else in the world. One such group, which began its evolution perhaps as long as 10 million years ago (Jordan *et al.* 2003, p. 89), is the narrow-winged Hawaiian damselfly genus *Megalagrion*. This genus appears to be most closely related to species of *Pseudagrion* elsewhere in the Indo-Pacific (Zimmerman 1948a, pp. 341, 345). The *Megalagrion* species of the Hawaiian Islands have evolved to occupy as many larval breeding niches as all the rest of the world's damselfly species combined, and in terms of the number of insular endemic (native to only one island) species, are exceeded only by the radiation of damselfly species of Fiji in the Pacific (Jordan *et al.* 2003, p. 91). Resembling slender dragonflies, damselflies are distinguished by folding their wings parallel to the body while at rest rather than holding them out perpendicular to the body.

Native Hawaiians apparently did not differentiate the various species, but referred to the native damselflies (and dragonflies) collectively as ''pinau,'' and to the red-colored damselflies specifically as ''pin ao ula.'' There has been no traditional European use of a common name for species in the genus *Megalagrion*. In his 1994 taxonomic review of the candidate species of insects of the Hawaiian Islands, Nishida (1994, pp. 4-7) proposed the name ''Hawaiian damselflies'' as the common name for species in the genus *Megalagrion*. Because this name reflects the restricted distribution of these insects and is nontechnical, the common name ''Hawaiian damselflies'' is adopted for general use here, and we use the accepted common names flying earwig Hawaiian damselfly and Pacific Hawaiian damselfly to identify the two individual species addressed in this proposed rule.

The general biology of Hawaiian damselflies is typical of other narrow-winged damselflies (Polhemus and Asquith 1996, pp. 2-7). The males of most species are territorial, guarding areas of habitat where females will lay eggs (Moore 1983a, p. 89). During copulation, and often while the female lays eggs, the male grasps the female behind the head with terminal abdominal appendages to guard the female against rival males; thus males and females are frequently seen flying in tandem.

In most species of Hawaiian damselflies, the immature larval stages (naiads) are aquatic, breathing through three flattened abdominal gills, and are predaceous, feeding on small aquatic invertebrates or fish (Williams 1936, p. 303). Females lay eggs in submerged aquatic vegetation or in mats of moss or algae on submerged rocks, and hatching occurs in about 10 days (Williams 1936, pp. 303, 306, 318; Evenhuis *et al.* 1995, p. 18). Naiads may take up to 4 months to mature (Williams 1936, p. 309), after which they crawl out of the water onto rocks or vegetation to molt into winged adults, typically remaining close to the aquatic habitat from which they emerged. The Pacific Hawaiian damselfly exhibits this typical aquatic life history.

The naiads of some species of Hawaiian damselflies are terrestrial or semi-terrestrial, living on wet rock faces or in damp terrestrial conditions, inhabiting wet leaf litter or moist leaf axils (the angled juncture of the leaf and stem) of native plants up to several feet above ground (Zimmerman 1970, p. 33; Simon *et al.* 1984, p. 13; Polhemus and Asquith 1996, p. 17). The naiads of these terrestrial and semi-terrestrial species have evolved short, thick, hairy gills and in many species are unable to swim (Polhemus and Asquith 1996, p. 75). The flying earwig Hawaiian damselfly is believed to exhibit this terrestrial or semi-terrestrial naiad life history.

Adult damselflies are predaceous and feed on small flying insects such as midges. The adults of many of the Hawaiian *Megalagrion* spp. are unusual in that they have a highly developed behavior of feigning death when caught or attacked (Moore 1983b, pp. 161-165).

The Hawaiian damselflies are represented by 23 species and 5 subspecies, and are found on 6 of the Hawaiian Islands (Kauai, Oahu, Molokai, Maui, Lanai, and Hawaii). There are more species of *Megalagrion* on the geologically older islands (e.g., 12 species on Kauai) than on the geologically youngest island (e.g., 8 species on Hawaii), and there are more single-island endemic species on the older islands (e.g., 10 on Kauai) than on the youngest island (e.g., none on Hawaii) (Jordan *et al.* 2003, p. 91). Historically, *Megalagrion* damselflies were among the most common and conspicuous native Hawaiian insects. Some species commonly inhabited water gardens in residential areas, artificial reservoirs, and watercress farms, and were even abundant in the city of Honolulu, as noted by early collectors of this group (Perkins 1899, p. 76; Perkins 1913, p. clxxviii; Williams 1936, p. 304).

Beginning with the early alteration of streams and wetland systems by the colonizing Hawaiians, followed by extensive stream and wetland conversion, alteration, and modification, and by degradation of native forests through the 20th century, Hawaii's native damselflies, including the two species that are the subject of this proposal, experienced a tremendous reduction in available habitat. In addition, predation by a number of nonnative species that have been both intentionally and, in some cases, inadvertently introduced onto the Hawaiian Islands is a significant and ongoing threat to all native Hawaiian damselflies.

Flying Earwig Hawaiian Damselfly

The flying earwig Hawaiian damselfly was first described from specimens collected in the 1890s in Puna on Hawaii Island by R.C.L. Perkins (1899, p. 72). Kennedy (1934, pp. 343-345) described what was believed at the time to be a new species of damselfly based on specimens from Maui; these were later determined to be synonymous with the specimens collected by Perkins. The flying earwig Hawaiian damselfly is a comparatively large and elongated species. The males are blue and black in color and exhibit distinctive, greatly enlarged, pincer-like cerci (paired appendages on the rear-most segment of the abdomen used to clasp the female during mating). Females are predominantly brownish in color. The adults measure from 1.8 to 1.9 inches (in) (46 to 50 millimeters (mm)) in length and have a wingspan of 1.9 to 2.1 in (50 to 53 mm). The wings of both sexes are clear except for the tips, which are narrowly darkened along the front margins. Naiads of this species have never been collected or found (Polhemus and Asquith 1996, p. 69), but they are believed to be terrestrial or semi-terrestrial in habit (Kennedy 1934, p. 345; Preston 2007).

The biology of the flying earwig Hawaiian damselfly is not well understood, and it is unknown if this species is more likely to be associated with standing water or flowing water (Kennedy 1934, p. 345; Polhemus 1994, p. 40). The only confirmed population found in the last 6 years occurs along a steep, moist, riparian talus slope (a slope formed by an accumulation of rock debris), densely covered with *Dicranopteris linearis* (uluhe), a native

fern. Adults of the flying earwig Hawaiian damselfly have been observed to perch on vegetation and boulders, and to fly slowly for short distances. When disturbed, the adults fly downward within nearby vegetation or between rocks, rather than up and away as is usually observed with aquatic Hawaiian damselfly species. Although immature individuals have not been located, based on the habitat and the behavior of the adults, it is believed that the naiads are terrestrial or semi-terrestrial, occurring among damp leaflitter (Kennedy 1934, p. 345) or possibly within moist soil or seeps between boulders in suitable habitat (Preston 2007). The highest elevation at which this species has been recorded is 3,000 feet (ft) (914 meters (m)), but its close association with uluhe habitat suggests that its range may extend upward to close to 4,000 ft (1,212 m) (Foote 2007).

Historically, the flying earwig Hawaiian damselfly was known from the islands of Hawaii and Maui. On Hawaii, it was originally known from seven or more general localities. The species has not been seen on Hawaii for over 80 years, although extensive surveys within apparently suitable habitat in the Kau and Olaa areas were conducted from 1997 to 2008 (Polhemus 2008). On Maui, the flying earwig damselfly was historically reported from five general locations on the windward side of the island (Kennedy 1934, p. 345). Since the 1930s, however, the flying earwig Hawaiian damselfly has only been observed in a single area on the windward side of east Maui, despite surveys from 1993 through 2008 at several of its historically occupied sites. The last observation of the species on windward east Maui was in 2005 (Foote 2008); the species was not observed during the last survey at this location in 2008. No quantitative estimate of the size of this remaining population is available.

It is hypothesized that the flying earwig Hawaiian damselfly may now be restricted to what is perhaps suboptimal habitat, where periodic absences of the species due to drought may be expected and might explain the lack of observations of the species (Foote 2007). Some researchers also believe that overcollection of this species by enthusiasts may have impacted some populations in the past (Polhemus 2008). It is further possible that the individuals observed in this area are actually part of a larger population that may be located in the extensive belt of uluhe habitat located upslope, where the habitat is predominantly native shrubs and matted fern understory (Foote 2007; Hawaii Biodiversity and Mapping Program (HBMP) 2006). Unsurveyed areas containing potentially suitable habitat for this species include the Hana coast of east Maui, and the east rift zone of Kilauea and the Kona area on the island of Hawaii (Foote 2007).

Pacific Hawaiian Damselfly

The Pacific Hawaiian damselfly was first described by McLachlan (1883, p. 234) based on specimens collected by R.C.L. Perkins from streams on the islands of Lanai and Maui. This damselfly is a relatively small, dark-colored species, with adults measuring from 1.3 to 1.4 in (34 to 37 mm) in length and having a wingspan of 1.3 to 1.6 in (33 to 42 mm). Both adult males and females are mostly black in color. Males exhibit brick red striping and patterns, while females exhibit light green striping and patterns. The only immature individuals of this species that have been collected were early-instar (an intermoult stage of development) individuals, and they exhibit flattened, leaf-like gills (Polhemus and Asquith 1996, p. 83). This species is most easily distinguished from other Hawaiian damselflies by the extremely long lower abdominal appendages of the male, which greatly exceed the length of the upper appendages.

Historically, the Pacific Hawaiian damselfly was known from lower elevations (below 2,000 ft (600 m)) on all of the main Hawaiian Islands except Kahoolawe and Niihau (Perkins 1899, p. 64). This species was known to breed primarily in lentic (standing water) systems such as marshes, seepage-fed pools, large ponds at higher elevations, and small, quiet pools in gulches that have been cut off from the main stream channel (Moore and Gagne 1982, p. 4; Polhemus and Asquith 1996, p. 83). The Pacific Hawaiian damselfly is no longer found in most lentic habitats in Hawaii, such as ponds and taro (*Colocasia esculenta*) fields, due to predation by nonnative fish that now occur in these systems (Moore and Gagne 1982, p. 4; Englund *et al.* 2007, p. 215). Observations have confirmed that the Pacific Hawaiian damselfly is now restricted almost exclusively to seepage-fed pools along overflow channels in the terminal reaches of perennial streams, usually in areas surrounded by thick vegetation (Moore and Gagne 1982, pp. 3-4; Polhemus 1994, p. 54; Englund 1999, p. 236; Englund *et al.* 2007, p. 216; Polhemus 2007, p. 238). Adults usually do not stray far from the vicinity of the breeding pools, perching on bordering vegetation and flying only short distances when disturbed (Polhemus and Asquith 1996, p. 83). This species is rarely seen along main stream channels, and its ability to disperse long distances over land or water is suspected to be poor compared to other Hawaiian damselflies (Jordan *et al.* 2007, p. 254).

The Pacific Hawaiian damselfly is now believed to be extirpated from the islands of Oahu, Kauai, and Lanai (Polhemus and Asquith 1996, p. 83). On the island of Oahu, due to its occupation of particularly vulnerable habitat within sidepools of lowland streams, the Pacific Hawaiian damselfly was rare by the 1890s and appears to have been extirpated from this island since 1910 (Liebherr and Polhemus 1997, p. 494). It is unknown when the Kauai and Lanai populations of the Pacific Hawaiian damselfly disappeared. Until 1998, it was believed that the species may also have been extirpated from the island of Hawaii. That year, one population was discovered within a small stream located just above, but isolated from, Maili Stream, which is known to be occupied by nonnative fish (Englund 1998, pp. 15-16). By the late 1970s, fewer than six populations of the Pacific Hawaiian damselfly could be located on Maui and Molokai (Harwood 1976, pp. 251-253; Gagne 1980, pp. 119, 125; Moore and Gagne 1982, p. 1), and the conservation of this species was identified as a priority by the International Union for the Conservation of Nature and Natural Resources (Moore 1982, p. 209).

The Pacific Hawaiian damselfly is currently found in at least seven streams on Molokai and may possibly be extant in other, unsurveyed streams on Molokai's north coast that have not been invaded by nonnative fish (Englund 2008). On the island of Maui, the species is currently known from 14 streams. The Pacific Hawaiian damselfly is no longer found along the entire reaches of these Maui streams, but only in restricted areas along each stream where steep terrain prevents access by nonnative fish, which inhabit degraded, lower stream reaches (Polhemus and Asquith 1996, p. 13; Englund *et al.* 2007, p. 215). The species is known from a single population on the island of Hawaii, last observed in 1998.

No quantitative estimates of the size of the extant populations are available. Howarth (1991, p. 490) described the Pacific Hawaiian damselfly as the most common and most widespread of the native damselfly species at the end of the 19th century, and yet a decline in this species was observed as early as 1905 due to the effects of nonnative fish introduced for control of mosquitoes.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These five listing factors are: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing a species as a threatened or endangered species under the Act may be warranted based on any of the above threat factors, singly or in combination.

The threats to the flying earwig and Pacific Hawaiian damselfly species are summarized according to the five listing factors in Table 1, and discussed in detail below.

TABLE 1. SUMMARY OF THREATS TO THE FLYING EARWING AND PACIFIC HAWAIIAN DAMSELFLY SPECIES.

Threat	Factor	Flying Earwig Hawaiian Damselfly	Pacific Hawaiian Damselfly
Agriculture/urban development	A	X	X
Stream alteration	A	P	X
Habitat modification by pigs	A	X	
Habitat modification by nonnative plants	A	X	X
Stochastic events	A	X	X
Climate change	A	X	X
Overcollection	B	P	
Predation	C	A, BF (P)	A, B, F, BF
Inadequate habitat protection	D	X	X
Inadequate protection from nonnative aquatic species introduction	D	X	X
Limited populations	E	X	X

A = ants B = backswimmers F = fish BF = bullfrogs P = potential threat

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of [Their] Habitat or Range

Freshwater habitats used by the flying earwig and Pacific Hawaiian damselflies on all of the main Hawaiian Islands have been severely altered and degraded because of past and present land and water management practices, including: agriculture and urban development; development of ground water, perched aquifer (aquifer sitting above main water table), and surface water resources; and the deliberate and accidental introductions of nonnative animals (Harris *et al.* 1993, pp. 12-13; Meier *et al.* 1993, pp. 181-183).

Habitat Destruction and Modification by Agriculture and Urban Development

Although there has never been a comprehensive, site-by-site assessment of wetland loss in Hawaii (Erikson and Puttock 2006, p. 40), Dahl (1990, p. 7) estimated that at least 12 percent of lowland to upper-elevation wetlands in Hawaii had been converted to non-wetland habitat by the 1980s. If only coastal plain (below 1,000 ft (305 m)) wetlands are considered, it is estimated that 30 percent have been converted for agricultural and urban development (Kosaka 1990). These marshlands and wetlands provided habitat for several damselfly species, including the Pacific Hawaiian damselfly.

Although extensive filling of freshwater wetlands is rarely permitted today, loss of riparian or wetland habitats utilized by the Pacific and flying earwig Hawaiian damselflies, such as smaller areas of moist slopes, emergent vegetations and narrow strips of freshwater seeps within anchialine pool complexes (landlocked bodies of water with a subterranean connection to the ocean), still occurs. In addition, marshes have been, and continue to be, slowly filled and converted to meadow habitat due to increased sedimentation resulting from increased storm water runoff from upslope development, the accumulation of uncontrolled growth of invasive vegetation, and blockage of downslope drainage (Wilson Okamoto & Associates, Inc. 1993, pp. 3-4 to 3-5).

The effects of future conversion of wetland and other aquatic habitat for agriculture and urban development are immediate and significant for the following reason: as noted above, an estimated 30 percent of all coastal plain wetlands in Hawaii have already been lost to agriculture and urban development, while the loss of lowland freshwater habitat in Hawaii already approaches 80 to 90 percent (Kosaka 1990). Lacking the aquatic habitat features that the damselflies require for essential life history needs, such as marshes, ponds, and sidepools along streams (Pacific Hawaiian damselfly) and riparian habitat (flying earwig Hawaiian damselfly), these modified areas no longer support populations of these two Hawaiian damselflies. Agriculture and urban development have thus contributed to the present curtailment of the habitat of these two Hawaiian damselflies, and we have no indication that this threat is likely to be significantly ameliorated in the near future.

Habitat Destruction and Modification by Stream Diversion

Stream modifications began with the early Hawaiians who diverted water to irrigate taro. However, early diversions often took no more than half the stream flow, and typically were periodic, to occasionally flood taro ponds year round, rather than continuously flood them (Handy and Handy 1972, pp. 58-59).

The advent of plantation sugarcane cultivation led to far more extensive stream diversions, with the first diversion built in 1856 on Kauai (Wilcox 1996, p. 54). These systems were designed to tap water at upper elevations (above 984 ft (300 m)) by means of a concrete weir in the stream (Wilcox 1996, p. 54). All or most of the low or average flow of the stream was, and often still is, diverted into fields or reservoirs, leaving many stream channels completely dry (Takasaki *et al.* 1969, pp. 27-28; Harris *et al.* 1993, p. 12; Wilcox 1996, p. 56).

By the 1930s, water diversions had been developed on all of the main Hawaiian Islands, and by 1978 the stream flow in over one-half of all of the 366 perennial streams in Hawaii had been altered in some manner (Brasher 2003, p. 1055). Some stream diversion systems are extensive, such as the Waiahole Ditch, which diverts water from 37 streams within the range of the Pacific Hawaiian damselfly on the windward side of Oahu to the dry plains on the leeward side of the island via a tunnel cut through the Koolau mountain range (Stearns and Vaksvik 1935, pp. 399-403). On west Maui, as of 1978, over 49 mi (78 km) of stream habitat in 12 streams had been lost due to diversions, and all of the 17 perennial streams on west Maui are dewatered to some extent (Maciolek 1979, p. 605). This loss of stream habitat may have contributed to the extirpation of the Pacific Hawaiian damselfly population on west Maui. Given the affiliation of the flying earwig Hawaiian damselfly with riparian habitats, this loss of stream habitat may also potentially account for its absence on west Maui. Most lower-elevation stream segments on west Maui are now completely dry, except during storm-influenced flows (Maciolek 1979, p. 605). The extensive diversion of streams on Maui island-wide has reduced the amount of stream habitat available to the Pacific Hawaiian damselfly, and potentially to the flying earwig Hawaiian damselfly as well.

In addition to diverting water for agriculture and domestic water supply, streams in Hawaii have also been diverted for use in hydroelectric power. There are a total of 18 active hydroelectric plants operating on Hawaiian streams on the islands of Hawaii, Kauai, and Maui, only one of which is located on a stream where a historical population of the Pacific Hawaiian damselfly was known on Kauai (Waimea). Another 38 sites have been identified for potential hydroelectric development on the islands of Hawaii, Kauai, Maui, and Molokai (Hawaii Stream Assessment 1990, pp. xxi, 96-97). Three of the proposed sites include current populations of the Pacific Hawaiian damselfly. Notably, the single current remaining population site for the flying earwig Hawaiian damselfly on Maui is identified as a potential hydroelectric site. Any additional diversion of streams for use in hydroelectric power could contribute to further loss of stream habitat for the Pacific Hawaiian damselfly and for the flying earwig Hawaiian damselfly.

Habitat Modification and Destruction by Dewatering of Aquifers

In addition to the diversion of stream water and the resultant downstream dewatering, many streams in Hawaii have experienced reduced or zero surface flow as a result of the dewatering of their source aquifers. Often these aquifers, which previously fed the streams, were tapped by tunneling or through the injudicious placement of wells (Stearns and Vaksvik 1935, pp. 386-434; Stearns 1985, pp. 291-305). These groundwater sources were captured for both domestic and agricultural use and in some areas have completely depleted nearby stream and spring flows. For example, the Waikolu Stream on Molokai has reduced flow due in part to groundwater withdrawal (Brasher 2003, p. 1,056), which may have reduced stream habitat available to the Pacific Hawaiian damselfly. Likewise, on Maui, streams in the west Maui Mountains that flow into the Lahaina District are fed by groundwater leaking from breached, high-elevation dikes. Downstream of the dike compartments, stream diversions are designed to capture all of the low stream flow, causing the streams downstream to be frequently dry (U.S. Geological Survey 2008a, p. 1), likely impacting available habitat for the Pacific Hawaiian damselfly, and potentially for the flying earwig Hawaiian damselfly, in the Honolua and Honokohau streams.

The island of Lanai lies within the rain shadow of the west Maui Mountains, which reach 5,788 ft (1,764 m) in elevation. Lower in elevation than Maui, annual rainfall on Lanai's summit is 30 to 40 in (760 to 1,015 mm) but much less over the rest of the island (University of Hawaii Department of Geography 1998, p. 13). Flows of almost every spring and seep on Lanai have been diverted (Stearns 1940, pp. 73-74, 85, 88, 95). Surface waters in streams have also been diverted by tunnels in stream beds. Historically, Maunalei Stream was the only perennial stream on Lanai, and Hawaiians constructed taro loi (ponds for cultivation of taro) in the lower portions of this stream system. In 1911, a tunnel was constructed at 1,100 ft (330 m) elevation that undercuts the stream bed, diverting both the surface and subsurface flows and dewatering the stream from this point to its mouth (Stearns 1940, pp. 86-88). The Pacific Hawaiian damselfly, which depends on stream habitat, was historically known from Lanai but is no longer extant on this island, and was most likely impacted by the dewatering of this stream because it was the only permanent stream on Lanai prior to its dewatering. This example of the negative impact of dewatering leads us to conclude that dewatering poses a threat to the Pacific Hawaiian damselfly and the flying earwig Hawaiian damselfly on the remaining islands where the species persist.

Habitat Modification and Destruction by Vertical Wells

Surface flow of streams has also been affected by vertical wells drilled in pre-modern times, because the basal aquifer (lowest groundwater layer) and alluvial caprock (sediment-deposited harder rock layer) through which the lower sections of streams flow can be pierced and hydraulically connected by wells (Stearns 1940, p. 88). This allows water in aquifers normally feeding the stream to be diverted elsewhere underground. Dewatering of the streams by tunneling and earlier, less-informed well placement near or in streams was a significant cause of habitat loss, and these effects continue today. Historically, for example, there was sufficient surface flow in Makaha and Nanakuli streams on Oahu to support taro loi in their lower reaches, but this flow disappeared subsequent to construction of vertical wells upstream (Devick 1995). The inadvertent dewatering of streams through the piercing of their aquifers (which are normally separated from adjacent water-bearing layers by an impermeable layer), by tunneling or through placement of vertical wells, caused the loss of Pacific Hawaiian damselfly habitat, and contributed to the Pacific Hawaiian damselfly's extirpation on the islands of Oahu, Kauai, and Lanai. Such activities also reduced the extent of stream habitat

for the Pacific Hawaiian damselfly on the islands of Maui, Molokai, and Hawaii. Most lower-elevation stream segments on west Maui and leeward east Maui are now completely dry, except during storm-influenced flows (Maciolek 1979, p. 605). The flow of nearly every seep and spring on Lanai has been captured or bored with wells (Stearns 1940, pp. 73-74, 85, 88, 95). The inadvertent drying of streams from poor well replacement and other activities has contributed to the decline of the Pacific Hawaiian damselfly by reducing its habitat on all of the islands from which it was historically known. It should be noted that the Pacific Hawaiian damselfly was once among the most commonly observed aquatic insects in the islands (Howarth 1991, p. 40). The dewatering of streams on Maui and Hawaii may also have impacted habitat of the flying earwig Hawaiian damselfly.

Although the State of Hawaii's Commission on Water Resource Management is now more cognizant of the effects that ground water removal has on streams via injudicious placement of wells, the Commission still routinely reviews new permit applications for wells (Hardy 2009). All requests for new wells require a drilling permit and, in some cases, a use permit is additionally required, depending upon the intended allocation and anticipated amount of water to be pumped from the well. Water Management Areas have been designated over much of Oahu and in some areas on other neighboring islands. Within these areas, a use permit for a new well is also required, which automatically triggers a greater review of the potential impacts. Any request for a permit to drill a well within proximity of streams or dike rock located at the headwaters of streams automatically triggers additional review (Hardy 2009). Permits to drill wells near streams or within dike complexes are now unlikely to be granted because a new well would require the amendment of in-stream flow standards for the impacted stream. However, such amendments are sometimes approved. One example is the long-contested case involving the Waiahole Ditch on the island of Oahu (Hawaii Department of Agriculture 2002). In that case, the Commission continues to support the removal of several million gallons of water daily from windward Oahu streams (Hawaii Department of Agriculture 2002). In conclusion, although a regulatory process is in place that can potentially address the effects of new requests for ground water removal on streams, this process includes provisions for amendments that would result in adverse effects to ground water that supports streamside habitat for the Pacific Hawaiian damselfly, and potentially for the flying earwig Hawaiian damselfly.

Habitat Modification and Destruction by Channelization

In addition to the destruction of most of the stream habitat of the Pacific Hawaiian damselfly and the flying earwig Hawaiian damselfly, most remaining stream habitat has been, and continues to be, seriously degraded throughout the Hawaiian Islands. Stream degradation has been particularly severe on the island of Oahu where, by 1978, 58 percent of all the perennial streams had been channelized (lined, partially lined or altered) to control flooding (Brasher 2003, p. 1055; Polhemus and Asquith 1996, p. 24), and 89 percent of the total length of these streams had been channelized (Parrish *et al.* 1984, p. 83). The channelization of streams creates artificial, wide-bottomed stream beds and often results in removal of riparian vegetation, increased substrate homogeneity, increased temporal water velocity (increased water flow speed during times of higher precipitation including minor and major flooding), increased illumination, and higher water temperatures (Parrish *et al.* 1984, p. 83; Brasher 2003, p. 1052). Natural streams meander and are lined with rocks, trees, and natural debris, and during times of flooding, jump their banks. Channelized streams are straightened and often lack natural obstructions, and during times of higher precipitation or flooding, facilitate a higher water flow velocity. Hawaiian damselflies are largely absent from channelized portions of streams (Polhemus and Asquith 1996, p. 24). In contrast, undisturbed Hawaiian stream systems exhibit a greater amount of riffle habitat, canopy closure, higher consistent flow velocity, and lower water temperatures that are characteristic of streams to which the Hawaiian damselflies, in general, are adapted (Brasher 2003, pp. 1054-1057).

Channelization of streams has not been restricted to lower stream reaches. For example, there is extensive channelization of the Kalihi Stream, on the island of Oahu, above 1,000 ft (300 m) elevation. Extensive stream channelization has contributed to the extirpation of the Pacific Hawaiian damselfly on Oahu (Englund 1999, p. 236; Polhemus 2008).

Stream diversion, channelization, and dewatering represent significant and immediate threats to the Pacific Hawaiian damselfly for the following reasons: (1) They reduce the amount and distribution of stream habitat available to this species; (2) they reduce stream flow, leaving lower elevation stream segments completely dry except during storms, or leaving many streams completely dry year round, thus reducing or eliminating stream habitat; and (3) they indirectly lead to an increase in water temperature that leads to the loss of Pacific Hawaiian damselfly naiads due to direct physiological stress. Because the probability of species extinction increases when ranges are restricted, habitat decreases, and population numbers decline, the Pacific Hawaiian damselfly is particularly vulnerable to extinction due to such changes in its stream habitats. In addition, stream diversion, dewatering, and vertical wells have the potential to negatively impact, and in some cases may have impacted, the flying earwig Hawaiian damselfly.

Habitat Destruction and Modification by Feral Pigs

One of the primary threats to the flying earwig Hawaiian damselfly is the ongoing destruction and degradation of its riparian habitat by nonnative animals, particularly feral pigs (*Sus scrofa*) (Polhemus and Asquith 1996, p. 22; Erickson and Puttock 2006, p. 42). Pigs of Asian descent were first introduced to Hawaii by the Polynesian ancestors of Hawaiians around 400 A.D. (Kirch 1982, pp. 3-4). Western immigrants, beginning with Captain Cook in 1778, repeatedly introduced European strains (Tomich 1986, pp. 120-121). The pigs escaped domestication and successfully invaded all areas, including wet and mesic forests and grasslands, on all of the main Hawaiian Islands.

High pig densities and expansion of their distribution have caused indisputable widespread damage to native vegetation on the Hawaiian Islands (Cuddihy and Stone 1990, p. 63). Feral pigs create open areas within forest habitat by digging up, eating, and trampling native plant species (Stone 1985, p. 263). These open areas become fertile ground for nonnative plant seeds spread through the excrement of the pigs and by transport in their hair (Stone 1985, p. 263). In nitrogen-poor soils, feral pig excrement increases nutrient availability, enhancing establishment of nonnative weeds that are more adapted to richer soils than are native plants (Cuddihy and Stone 1990, p. 65). In this manner, largely nonnative forests replace native forest habitat (Cuddihy and Stone 1990, p. 65). In

addition, feral pigs will root and dig for plant tubers and worms in wetlands, including marshes, on all of the main Hawaiian Islands (Erikson and Puttock 2006, p. 42).

In a study conducted in the 1980s on feral pig populations in the Kipahulu Valley on Maui, the deleterious effects of feral pig rooting on native forest ecosystems was documented (Diong 1982, pp. 150, 160-167). Rooting by feral pigs was observed to be related to the search for earthworms, with rooting depths averaging 8 in (20 cm), and rooting was found to greatly disrupt the leaf litter and topsoil layers, and contribute to erosion and changes in ground topography. The feeding habits of pigs were observed to create seed beds, enabling the establishment and spread of invasive weedy species such as *Clidemia hirta* (Koster's curse). The study concluded that all aspects of the feeding habits of pigs are damaging to the structure and function of the Hawaiian forest ecosystem (Diong 1982, pp. 160-167).

It is likely that pigs similarly impact the native vegetation used for perching by adult flying earwig Hawaiian damselflies. On Maui, feral pigs inhabit the uluhe-dominated riparian habitat of the flying earwig Hawaiian damselfly. Through their rooting and digging activities, they have significantly degraded and destroyed the habitat of the adult flying earwig Hawaiian damselfly (Foote 2008).

In addition to creating conditions that enable the spread of nonnative plant species, Mountainspring (1986, p. 98) surmised that rooting by pigs depresses insect populations that depend upon the ground layer at some life stage or that exhibit diel (day and night) movements. As a result, it is likely that the presumed habitat (seeps or damp leaf litter) of the naiads of the flying earwig Hawaiian damselfly is negatively impacted by feral pig activity, including the uprooting and denuding of native vegetation (Foote 2008; Polhemus 2008).

Notwithstanding the above impacts, feral pigs are managed as a game animal for public hunting in the more accessible regions of the east Maui watershed (Jokiel 2008). In contrast to an eradication program, this action makes it likely that feral pigs will continue to exist on Maui, and thus likely that pigs will continue to destroy and degrade habitat of the flying earwig Hawaiian damselfly on the island of Maui.

The effects from introduced feral pigs are immediate and ongoing because pigs currently occur in the uluhe-dominated riparian habitat of the flying earwig Hawaiian damselfly. The threat of habitat destruction or modification from feral pigs is significant for the following reasons: (1) Trampling and grazing directly impact the vegetation used by adult flying earwig Hawaiian damselflies for perching and by the terrestrial or semi-terrestrial naiads; (2) increased soil disturbance leads to mechanical damage to plants used by adults for perching and by the terrestrial or semi-terrestrial naiads; (3) creation of open, disturbed areas, conducive to weedy plant invasion and establishment of alien plants from dispersed fruits and seeds, results over time in the conversion of a community dominated by native vegetation to one dominated by nonnative vegetation (leading to all of the negative impacts associated with nonnative plants, detailed below); and (4) increased watershed erosion and sedimentation further degrade habitat for the flying earwig Hawaiian damselfly. These threats are expected to continue or increase without control or elimination of pig populations in these habitats.

Habitat Destruction and Modification by Nonnative Plants

The invasion of nonnative plants, including *Clidemia hirta,* further contributes to the degradation of Hawaii's native forests, including the riparian habitat of the flying earwig Hawaiian damselfly on Maui (Foote 2008). *Clidemia hirta* is the most serious nonnative plant invader within the uluhe-dominated riparian habitat where the flying earwig Hawaiian damselfly occurs on Maui and where it formerly occurred on the island of Hawaii (Foote 2008). *Clidemia hirta* can outcompete the native uluhe fern, and so is capable of altering the natural environment where the flying earwig Hawaiian damselfly occurs. A noxious shrub first cultivated in Wahiawa on Oahu before 1941, this plant is now found on all of the main Hawaiian Islands (Wagner *et al.* 1985, p. 41). *Clidemia hirta* forms a dense understory, shading out native plants and hindering their regeneration; it is considered a major nonnative plant threat in wet forest areas because it inhibits and eventually replaces native plants (Wagner *et al.* 1985, p. 41; Smith 1989, p. 64).

Presently, the most significant threat to natural ponds and marshes in Hawaii is the nonnative species *Urochloa mutica* (California grass). This sprawling perennial grass is likely from Africa (Erickson and Puttock 2006, p. 270). It was first noted on Oahu in 1924 and now occurs on all of the main Hawaiian Islands (O'Connor 1999, p. 1,504), where it is considered an aggressive invasive weed of marshes and wetlands (Erickson and Puttock 2006, p. 270). Found from sea level to 3,610 ft (1,100 m) in elevation (Erickson and Puttock 2006, p. 270), this plant forms dense, monotypic stands that can completely eliminate any open water by layering its trailing stems (Smith 1985, p. 186). Marshlands eventually convert to meadowland when invaded by *Urochloa mutica* (Polhemus and Asquith 1996, p. 23). At Kawainui Marsh, the most extensive marsh system remaining on Oahu, control of *Urochloa mutica* to prevent conversion of the marsh to meadowland is an ongoing management activity (Wilson, Okamoto and Associates, Inc. 1993, pp. 3-4; Hawaiian Ecosystems at Risk (HEAR) 2008, p. 1). The preferred habitat of the Pacific Hawaiian damselfly (primarily lowland, stagnant water, large ponds, and small pools) on all of the Hawaiian Islands has likely declined and continues to decline due to the spread of *Urochloa mutica*, which is causing the conversion of marshlands to meadowlands (Polhemus and Asquith 1996, p. 23).

Nonnative plants represent a significant and immediate and ongoing threat to the flying earwig Hawaiian damselfly through habitat destruction and modification for the following reasons: (1) They adversely impact microhabitat by modifying the availability of light; (2) they alter soil-water regimes; (3) they modify nutrient cycling processes; and (4) they outcompete, and possibly directly inhibit the growth of, native plant species; ultimately, native dominated plant communities are converted to nonnative plant communities (Cuddihy and Stone 1990, p. 74; Vitousek 1992, pp. 33-35). This conversion negatively impacts and threatens the flying earwig Hawaiian damselfly, which depends upon native plant species, particularly uluhe, for essential life history needs. Conversion habitat from marshlands to meadowlands by the nonnative *Urochloa mutica* also threatens the Pacific Hawaiian damselfly. These threats are expected to continue or increase without control or elimination of invasive nonnative plants in these habitats.

Habitat Destruction and Modification by Hurricanes, Landslides, and Drought

Stochastic (random, naturally occurring) events, such as hurricanes, landslides, and drought, alter or degrade the habitat of Hawaiian damselflies directly by modifying and destroying native riparian, wetland, and stream habitats (e.g., rocks and debris falling in a stream; mechanical damage to riparian and wetland vegetation), and indirectly

by creating disturbed areas conducive to invasion by nonnative plants that outcompete the native plants used by damselflies for perching. We presume these events also alter microclimatic conditions (e.g., opening the tree canopy that leads to an increase in stream water temperature; increasing stream sedimentation) so that the habitat no longer supports damselfly populations. Both the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly may also be affected by temporary habitat loss (e.g., desiccation of streams, die-off of uluhe) associated with droughts, which are not uncommon on the Hawaiian Islands. With populations that have already been severely reduced in both abundance and geographic distribution, even such a temporary loss of habitat can have a negative impact on the species.

Natural disasters such as hurricanes and drought, and local, random environmental events (such as landslides), represent a significant threat to native riparian, wetland, and stream habitat and the two damselfly species addressed in this proposed rule. These types of events are known to cause significant habitat damage (e.g., Polhemus 1993, p. 86). Because the two species addressed in this proposed rule now persist in low numbers or occur in restricted ranges, they are more vulnerable to these events and less resilient to such habitat disturbances. Hurricanes, drought, and landslides are known and expected to occur at irregular intervals. Therefore, they pose an immediate and ongoing threat to the two damselfly species and their habitat.

Habitat Destruction and Modification by Climate Change

The information currently available on the effects of global climate change does not make sufficiently precise estimates of the location and magnitude of the effects. Consequently, the exact nature of the impacts of climate change and increasing temperatures on native Hawaiian ecosystems, including the aquatic and riparian habitats of the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly, are unknown. However, they are likely to include the loss of aquatic habitat through reduced stream flow and evaporation of standing water, increased streamwater temperature, and the loss of native riparian and wetland plants that comprise the habitat in which these two species occur (Pounds *et al.* 1999, pp. 611-612; Still *et al.* 1999, p. 610; Benning *et al.* 2002, pp. 14,246 and 14,248).

Oki (2004, p. 4) has noted long-term evidence of decreased precipitation and stream flow in the Hawaiian Islands, based upon evidence collected by stream gauging stations. This long-term drying trend, coupled with existing ditch diversions and periodic El Niño-caused drying events, has created a pattern of severe and persistent stream dewatering events (Polhemus 2008). Future changes in precipitation and the forecast of those changes are highly uncertain because they depend, in part, on how the El Niño-La Niña weather cycle (a disruption of the ocean atmospheric system in the tropical Pacific having important global consequences for weather and climate) might change (Hawaii Climate Change Action Plan 1998, pp. 2-10).

The flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly may be especially vulnerable to extinction due to anticipated environmental change that may result from global climate change. Environmental changes that may affect these species are expected to include habitat loss or alteration and changes in disturbance regimes (e.g., storms and hurricanes), in addition to direct physiological stress caused by increased stream water temperatures to which the native Hawaiian damselfly fauna are not adapted. The probability of a species going extinct as a result of these factors increases when its range is restricted, habitat decreases, and population numbers decline (Intergovernmental Panel on Climate Change 2007, p. 8). Both of these damselfly species have limited environmental tolerances ranges, restricted habitat requirements, small population size, and a low number of individuals. Therefore, we would expect these species to be particularly vulnerable to projected environmental impacts that may result from changes in climate, and subsequent impacts to their aquatic and riparian habitats (e.g., Pounds *et al.* 1999, pp. 611-612; Still *et al.* 1999, p. 610; Benning *et al.* 2002, pp. 14,246 and 14,248). We believe changes in environmental conditions that may result from climate change will likely impact these two species and, according to current climate projections, we do not anticipate a reduction in this threat any time in the near future.

Summary of Factor A

The effects of past and present destruction, modification, and degradation of native riparian, wetland, and stream habitats threaten the continued existence of the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly, which depend on these habitats, throughout their respective ranges. These effects have been or continue to be caused by: agriculture and urban development; stream diversion, channelization, and dewatering; introduced feral pigs; introduced plants; and hurricanes, landslides, and drought. The ongoing and likely increasing effects of global climate change are also likely to adversely impact, directly or indirectly, the habitat of these two species.

Agriculture and urban development, to date, have caused the loss of 30 percent of Hawaii's coastal plain wetlands and 80 to 90 percent of lowland freshwater habitat in Hawaii. Extensive stream diversions and the ongoing dewatering of remaining wetland habitats continue to degrade the quality of Pacific Hawaiian damselfly habitat and its capability to support viable populations of this species and may also negatively affect the habitat of the flying earwig Hawaiian damselfly. Ongoing habitat destruction and degradation caused by feral pigs in remaining tracts of uluhe-dominated riparian habitat promote the establishment and spread of nonnative plants which, in turn, lower or destroy the capability of the habitat to support viable populations of the flying earwig Hawaiian damselfly.

The above threats have caused the extirpation of many flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly populations; as a result, their current ranges are very restricted. The combination of restricted range, limited habitat quantity and quality, and low population size makes each of these species especially vulnerable to extinction. Thus we consider the present or threatened destruction, modification, or curtailment of the habitat and range of the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly to pose an immediate and significant threat to these species.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Individuals from what may be the single remaining population of the flying earwig Hawaiian damselfly were collected by amateur collectors as recently as the mid-1990s (Polhemus 2008). Although it is not known how many individuals were collected at that time, Polhemus (2008) believes this incident resulted in a noticeable decrease in the population size. Furthermore, if there is only one population of the species left, the decreased reproduction that would result from the removal of potentially breeding adults would have a

potentially significant negative impact on the species.

There is a market for damselflies that may serve as an incentive to collect them. There are internet websites that offer damselfly specimens or parts (e.g., wings) for sale. In addition, the internet abounds with ''how to'' guides for collecting and preserving damselfly specimens (e.g., Abbott 2000, pp. 1-3). After butterflies and large beetles, dragonflies and damselflies are probably the most frequently collected insects in the world (Polhemus 2009). A rare specimen such as the flying earwig Hawaiian damselfly may be particularly attractive to potential collectors (Polhemus 2008). Based on the history of collection of the flying earwig Hawaiian damselfly, the market for damselfly specimens or parts, and the vulnerability of this small population to the negative impacts of any collection, we consider the potential overutilization of the flying earwig Hawaiian damselfly to pose an immediate and significant threat to this species.

Unlike the flying earwig Hawaiian damselfly, which is restricted to one remaining population site and which is known to have previously been of interest to odonata enthusiasts (Polhemus 2008), we do not believe over-collection is currently a threat to the Pacific Hawaiian damselfly because it is comparatively more widespread across several population sites on three islands.

Factor C. Disease or Predation

The geographic isolation of the Hawaiian Islands restricted the number of original successful colonizing arthropods and resulted in the development of Hawaii's unusual fauna. Only 15 percent of the known families of insects are represented by native Hawaiian species (Howarth 1990, p. 11). Some groups of insects that often dominate continental arthropod fauna, including social Hymenoptera (e.g., ants and wasps) were absent during the evolution of Hawaii's unique arthropod fauna. Commercial shipping and air cargo, as well as biological introductions to Hawaii, have resulted in the establishment of over 3,372 species of nonnative insects (Howarth 1990, p. 18; Staples and Cowie 2001, p. 52), with an estimated continuing establishment rate of 20 to 30 new species per year (Beardsley 1962, p. 101; Beardsley 1979, p. 36; Staples and Cowie 2001, p. 52).

Nonnative arthropod predators and parasites have also been intentionally imported and released by individuals and governmental agencies for biological control of insect pests. Between 1890 and 1985, 243 nonnative species were introduced, sometimes with the specific intent of reducing populations of native Hawaiian insects (Funasaki *et al.* 1988, p. 105; Lai 1988, pp. 186-187). Nonnative arthropods, whether purposefully or accidentally introduced, pose a serious threat to Hawaii's native insects, including the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly, through direct predation (Howarth and Medeiros 1989, pp. 82-83; Howarth and Ramsay 1991, pp. 81-84; Staples and Cowie 2001, pp. 54-57).

In addition to the problems posed by nonnative arthropods, the establishment of various nonnative fish, frogs, and toads that act as predators on native Hawaiian damselflies has also had a serious negative impact on the Pacific Hawaiian damselfly and flying earwig Hawaiian damselfly, as discussed below.

Predation by Nonnative Ants

Ants are not a natural component of Hawaii's arthropod fauna, and the native species of the islands evolved in the absence of predation pressure from ants. Ants can be particularly destructive predators because of their high densities, recruitment behavior, aggressiveness, and broad range of diet (Reimer 1993, pp. 17-18). The threat of ant predation on the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly is amplified by the fact that most ant species have winged reproductive adults (Borror *et al.* 1989, p. 738) and can quickly establish new colonies in suitable habitats (Staples and Cowie 2001, p. 55). These attributes allow some ants to destroy otherwise geographically isolated populations of native arthropods (Nafus 1993, pp. 19, 22-23).

At least 47 species of ants are known to be established in the Hawaiian Islands (Hawaii Ants 2008, pp. 1-11), and at least 4 particularly aggressive species have severely impacted the native insect fauna, likely including native damselflies (Zimmerman 1948b, p. 173; Reimer *et al.* 1990, pp. 40-43; HEAR database 2005, pp. 1-2): the big headed ant (*Pheidole megacephala*), the long-legged ant (also known as the yellow crazy ant) (*Anoplolepis gracilipes*), *Solenopsis papuana* (no common name), and *Solenopsis geminata* (no common name). Numerous other species of ants are recognized as threats to Hawaii's native invertebrates, and an unknown number of new species of ants are established every few years (Staples and Cowie 2001, pp. 53). Due to their preference for drier habitat sites, ants are less likely to occur in high densities in the riparian and aquatic habitat currently occupied by the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly. However, some species of ants (e.g., the long-legged ant and *Solenopsis papuana*) have increased their range into these areas.

The presence of ants in nearly all of the lower elevation habitat sites historically occupied by the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly may preclude the future recolonization of these areas by these two species. Damselfly naiads may be particularly susceptible to ant predation when they crawl out of the water or seek a terrestrial location for their metamorphosis into the adult stage. Likewise, newly emerged adult damselflies are susceptible to predation until their wings have sufficiently hardened to permit flight, or when the adults are simply resting on vegetation at night (Polhemus 2008). In 1998, during a survey of an Oahu stream, researchers observed predation by ants upon another damselfly species, the orangeblack Hawaiian damselfly (*Megalagrion xanthomelas*) (Englund 2008).

The long-legged ant appeared in Hawaii in 1952, and now occurs on Kauai, Oahu, Maui, and Hawaii (Reimer *et al.* 1990, p. 42). It inhabits low to midelevation (less than 2,000 ft (600 m)) rocky areas of moderate rainfall (less than 100 in (250 cm) annually) (Reimer *et al.* 1990, p. 42). Direct observations indicate that Hawaiian arthropods are susceptible to predation by this species. Gillespie and Reimer (1993, p. 21) and Hardy (1979, p. 34) documented the impacts to native insects within the Kipahulu area on Maui after this area was invaded by the long-legged ant. Although only cursory observations exist, long-legged ants are thought to be a threat to populations of the Pacific Hawaiian damselfly in mesic areas within its elevation range (Foote 2008).

Solenopsis papuana is the only abundant, aggressive ant that has invaded intact mesic to wet forest from sea level to over 2,000 ft (600 m) on all of the main Hawaiian Islands, and is still expanding its range (Reimer 1993, p. 14). It is likely, based on our knowledge of the expanding range of this invasive ant, that it threatens populations of the Pacific Hawaiian damselfly in mesic areas up to 2,000 ft (600 m) elevation as well (Foote 2008).

The rarity or disappearance of native damselfly species, including the two species in this proposal, from historical observation sites over the past 100 years

is likely due to a variety of factors. While there is no documentation that conclusively ties the decrease in damselfly observations to the establishment of nonnative ants in low to montane, and mesic to wet, habitats on the Hawaiian Islands, the presence of nonnative ants in these habitats and the decline of damselfly observations in these habitats suggest that nonnative ants may have played a role in the decline of some populations of the two damselflies that are the subject of this proposal.

In summary, observations and reports have documented that ants are particularly destructive predators because of their high densities, broad range of diet, and ability to establish new colonies in otherwise geographically isolated locations because the reproductive adults are able to fly. Damselfly naiads are particularly vulnerable to ant predation when they crawl out of water or seek a terrestrial location for metamorphosis into adults, and newly emerged adults are susceptible to predation until they can fly. In particular, the long-legged ant and *Solenopsis papuana* are two aggressive species reported from sea level to 2,000 ft (610 m) in elevation on all of the main Hawaiian Islands. Since their range overlaps that of both damselfly species, we consider these introduced ants to pose an immediate and significant threat to both damselfly species. Unless these aggressive nonnative ant predators are eliminated or controlled, we expect this threat to continue or increase.

Predation by Nonnative Backswimmers

Backswimmers, so-called because they swim upside down, are aquatic ''true bugs'' (Heteroptera). Backswimmers are voracious predators and frequently feed on prey much larger than themselves, such as tadpoles, small fish, and other aquatic insects including damselfly naiads (Heads 1985, p. 559; Heads 1986, p. 369). Backswimmers are not native to Hawaii, but several species have been introduced. *Notonecta indica* (no common name) was first collected on Oahu in the mid-1980s and is presently known from Oahu, Maui, and Hawaii. Species of *Notonecta* are known to prey on damselfly naiads and the mere presence of this predator in the water can cause naiads to reduce foraging (which can reduce naiad growth, development, and survival) (Heads 1985, p. 559; Heads 1986, p. 369). While there is no documentation that conclusively ties the decrease in damselfly observations to the establishment of nonnative backswimmers in Hawaiian streams and other aquatic habitat, the presence of backswimmers in these habitats and the concurrent decline of damselfly observation in some areas suggest that these nonnative aquatic insects may have played a role in the decline of some damselfly populations, including those of the Pacific Hawaiian damselfly.

We consider predation by nonnative backswimmers to pose a significant and immediate threat to the Pacific Hawaiian damselfly since this species has an aquatic naiad life stage. In addition, the presence of these predators in damselfly aquatic habitat causes naiads to reduce foraging, which in turn reduces their growth, development, and survival. Backswimmers are reported on all of the main Hawaiian Islands except Kahoolawe. In the absence of the elimination or control of nonnative backswimmers, we expect this threat to continue or increase over time.

Predation by Nonnative Fish

Predation by nonnative fish is a significant threat to Hawaiian damselfly species with aquatic life stages, such as the Pacific Hawaiian damselfly. The aquatic naiads tend to rest and feed near or on the surface of the water, or on rocks where they are exposed and vulnerable to predation by nonnative fish. Hawaii has only five native freshwater fish species, comprised of gobies (Gobiidae) and sleepers (Eleotridae), that occur on all of the major islands. Because these native fish are benthic (bottom) feeders (Kido *et al.* 1993, pp. 43-44; Ego 1956, p. 24; Englund 1999, pp. 236-237), Hawaii's stream-dwelling damselfly species probably experienced limited natural predation pressure due to their avoidance of benthic areas in preference for shallow side channels, sidepools, and higher velocity riffles and seeps (Englund 1999, pp. 236-237). While fish predation has been an important factor in the evolution of behavior in damselfly naiads in continental systems (Johnson 1991, pp. 8), it is speculated that Hawaii's stream-dwelling damselflies adapted behaviors to avoid the benthic feeding habits of native fish species. Additionally, some species of damselflies, including some of the native Hawaiian species, are not adapted to cohabitate with some fish species, and are found only in bodies of water without fish (Henrickson 1988, p. 179; McPeek 1990a, p. 83). The naiads of the aquatic Pacific Hawaiian damselfly tend to occupy more exposed positions and engage in conspicuous foraging behavior, thereby increasing their susceptibility to fish predation (Englund 1999, p. 232), unlike damselflies which co-evolved with predaceous fish (Macan 1977, p. 48; McPeek 1990b, p. 1,714). In laboratory studies, Englund (1999, p. 232) found that naiads of the orangeblack Hawaiian damselfly and the Pacific Hawaiian damselfly invariably were eaten due to their behavior of swimming to the water surface when exposed to two nonnative freshwater fish. In the same study, naiads of nonnative damselfly species avoided predation by the same fish species by remaining still and avoiding surface waters (Englund 1999, p. 232).

Over 70 species of nonnative fish have been introduced into Hawaiian freshwater habitats (Devick 1991, p. 190; Englund 1999, p. 226; Staples and Cowie 2001, p. 32; Brasher 2003, p. 1,054; Englund 2004, p.27; Englund *et al.* 2007, p. 232); at least 51 species are now established in the freshwater habitats of Hawaii (Freshwater Fishes of Hawaii 2008). The initial introduction of nonnative fish to Hawaii began with the release of food stock species by Asian immigrants at the turn of the 20th century; however, the impact of these first introductions to Hawaiian damselflies cannot be assessed because they predated the initial collection of damselflies in Hawaii (Perkins 1899, pp. 64-76).

In 1905, three species of fish within the Poeciliidae family, including the mosquito fish (*Gambusia affinis*) and the sailfin molly (*Poecilia latipinna*), were introduced for biological control of mosquitoes (Van Dine 1907, p. 9; Englund 1999, p. 225; Brasher 2003, p. 1054). In 1922, several additional species were introduced for mosquito control, including the green swordtail (*Xiphophorus helleri*), the moonfish (*Xiphophorus maculatus*), and the guppy (*Poecilia reticulata*). By 1935, some Oahu damselfly species, including the orangeblack Hawaiian damselfly, were becoming less common, and fish introduced for mosquito control were the suspected cause of their decline (Williams 1936, p. 313; Zimmerman 1948b, p. 341). Current literature clearly indicates that the extirpation of the Pacific Hawaiian damselfly from the majority of its historical habitat sites on the main Hawaiian Islands is the result of predation by nonnative fish (Moore and Gagne 1982, p. 4; Liebherr and Polhemus 1997, p. 502; Englund 1999, pp. 235-237; Brasher 2003, p. 1,055; Englund *et al.* 2007, p. 215; Polhemus 2007, pp. 238-239). From 1946 through 1961, several additional nonnative fish were introduced for the purpose of controlling nonnative aquatic plants, and for angling (Brasher 2003, p. 1,054). In the early 1980s, several additional species of nonnative fish began appearing in stream systems, likely

originating from the aquarium fish trade (Devick 1991, p. 189; Brasher 2003, p. 1,054). By 1990, there were an additional 14 species of nonnative fish established in waters on Hawaii, Maui, and Molokai. By 2008, there were at least 17 nonnative freshwater fish established on one or more of these islands, including several aggressive predators and habitat-altering species such as the channel catfish (*Ictalurus punctatus*) and cichlids (*Tilapia* sp.) (Devick 1991, pp. 191-192; FishBase 2008).

Currently, the Pacific Hawaiian damselfly is found only in portions of stream systems without nonnative fish (Liebherr and Polhemus 1997, pp. 493-494; Englund 1999, p. 228; Englund 2004, p. 27; Englund *et al.* 2007, p. 215). There is a strong correlation between the absence of nonnative fish species and the presence of Hawaiian damselflies in streams on all of the main Hawaiian Islands (Englund 1999, p. 225; Englund *et al.* 2007, p. 215), suggesting that the damselflies cannot coexist with nonnative fish. The distribution of some Hawaiian damselfly species are now reduced to stream reaches less than 312 ft (95 m) in length and that lack invasive fish species (Englund 1999, p. 229; Englund 2004, p. 27). In 2007, a statewide survey that included 15 streams on the islands of Hawaii, Maui, and Molokai found that the flying earwig Hawaiian damselfly was not found in streams where the introduced Mexican molly (*Poecilia mexicana*) was present (Englund *et al.* 2007, pp. 214-216, 228). On Oahu, researchers found that the Oahu-endemic Hawaiian damselflies only occupied habitat sites without nonnative fish. For two of these species, a geologic or manmade barrier (e.g., waterfalls, steep gradient, dry stream midreaches, or constructed diversions) appears to prevent access by the nonnative fish species. For this reason, researchers have recommended that geologically isolated sites, such as isolated anchialine ponds and high-gradient streams interrupted by manmade diversions and those entering the coast as waterfalls, be used as restoration sites for damselflies on all of the Hawaiian Islands (Englund 2004, p. 27).

Of the two damselfly species considered in this proposal, the aquatic Pacific Hawaiian damselfly appears to have had the greatest range contraction due to predation by nonnative fish (Englund 1999, p. 235; Polhemus 2007, p. 234, 238-240). Once found on all of the main Hawaiian Islands, it is now found only on Molokai, Maui, and one stream on the island of Hawaii below 2,000 ft (600 m) in elevation; all are in stream habitat sites free of nonnative fish. The Pacific Hawaiian damselfly was extirpated from Oahu by 1910 (Liebherr and Polhemus 1997, p. 502), although Englund (1999, p. 235) found that Oahu still has abundant and otherwise suitable lowland and coastal water habitat to support this species. However, this aquatic habitat is infested with nonnative fish, with some nonnative species occurring up to 1,300 ft (400 m) elevation. Englund (1999, p. 236) found that even at sea level, artificial wetlands (resulting from taro cultivation) on the island of Molokai can support populations of the Pacific Hawaiian damselfly because nonnative fish are absent.

Even the geographically isolated stream headwaters and other aquatic habitats where the Pacific Hawaiian damselfly remains extant are not secure from the threat of predation by introduced fish species. There are many documented cases of people moving nonnative fish from one area to another (Brock 1995, pp. 3-4; Englund 1999, p. 237). Once nonnative fish species are introduced to aquatic habitats previously free of nonnative fish, they often become permanently established (Englund and Filbert 1999, p. 151; Englund 1999, pp. 232-233; Englund *et al.* 2007). An example of facilitated fish movement occurred in 2000, when an uninformed maintenance worker introduced *Tilapia* sp. into pools located on the grounds of Tripler Hospital that were maintained for the benefit of the remaining Oahu population of the orangeblack Hawaiian damselfly (Englund 2000).

The continued introduction and establishment of new species of predatory nonnative fish in Hawaiian waters, and the possible movement of these nonnative species to new streams and other aquatic habitat, is an immediate and significant threat to the survival of the aquatic Pacific Hawaiian damselfly. Unless nonnative predatory fish are eradicated or effectively controlled in the habitats utilized by the Pacific Hawaiian damselfly, we have no reason to believe that there will be any significant reduction in this threat at any time in the near future. The flying earwig Hawaiian damselfly is not known to be threatened by predation from nonnative fish species, due to its presumed more terrestrial habitats.

Predation by Introduced Frogs and Toads

Currently, there are three species of introduced aquatic amphibians known on the Hawaiian Islands: the North American bullfrog (*Rana catesbeiana*), the cane toad (*Bufo marinus*), and the Japanese wrinkled frog (*Rana rugosa*). The bullfrog is native to the eastern United States and the Great Plains region (Moyle 1973, p. 18; Bury and Whelan 1985 in Earlham College 2002, p. 10), and was first introduced into Hawaii in 1899 (Bryan 1931, p. 63) to help control insects, specifically the nonnative Japanese beetle (*Popillia japonica*), a significant pest of ornamental plants (Bryan 1931, p. 62). Bullfrogs were first released and quickly became established in the Hilo region on the island of Hawaii (Bryan 1931, p. 63). Bullfrogs have demonstrated great success in establishing new populations wherever they have been introduced (Moyle 1973, p. 19), and now occur on the islands of Hawaii, Kauai, Lanai, Maui, Molokai, and Oahu (U.S. Geological Survey 2008b, p. 8). This species is flexible in both habitat and food requirements (Bury and Whelan 1985 in Earlham College 2002, p. 11), and can utilize any water source within its temperature range (60 to 75 oFarenheit (oF) (16 to 24 oCelsius (oC)) (DesertUSA 2008). Introduced to areas outside its native range, the bullfrog's primary impact is typically the elimination of native frog species (Moyle 1973, p. 21). In Hawaii, where there are no native frogs, the bullfrog has not been definitively implicated in the extirpation of any particular native aquatic species, but Englund *et al.* (2007, pp. 215, 219) found a strong correlation between the presence of bullfrogs and the absence of Hawaiian damselflies in their 2006 study of streams on all of the main Hawaiian Islands. As the bullfrog prefers habitats with dense vegetation and relatively calm water (Moyle 1973, p. 19; Bury and Whelan 1985 in Earlham College 2002, p. 9), it is likely of particular threat to the Pacific Hawaiian damselfly because this species also prefers calm water habitat that is surrounded by dense vegetation. Capable of breeding within small pools of water, bullfrogs are also a potential threat to the flying earwig Hawaiian damselfly within its uluhe-covered, steep, riparian, moist talus slope habitat on Maui.

Because the effects of possible predation by the cane toad and the Japanese wrinkled frog on the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly are unknown at this time, the magnitude or significance of this potential threat cannot be determined.

We consider predation by bullfrogs to pose a significant and immediate threat to the Pacific Hawaiian damselfly, since Englund *et al.* (2007, pp. 215, 219) found a strong correlation between the presence of predatory nonnative

bullfrogs and the absence of Hawaiian damselflies, and the preferred habitat of the bullfrog overlaps with that of the Pacific Hawaiian damselfly. Within its riparian habitat, the flying earwig Hawaiian damselfly may also be threatened by the bullfrog, which is capable of breeding within small pools of water. In the absence of the elimination or control of nonnative bullfrogs, we expect that this threat will continue or increase in the future.

Summary of Factor C

Predation by nonnative animal species (ants, backswimmers, fish, and bullfrogs) poses an immediate and significant threat to the Pacific and flying earwig Hawaiian damselflies throughout their ranges, for the following reasons:

• Damselfly naiads are vulnerable to predation by ants, and the ranges of both the Pacific and flying earwig Hawaiian damselflies overlap that of particularly aggressive, nonnative, predatory ant species that currently occur from sea level to 2,000 ft (610 m) in elevation on all of the main Hawaiian Islands. We consider both of the Hawaiian damselflies that are the subject of this proposed rule to be threatened by predation by these nonnative ants.

• Nonnative backswimmers prey on damselfly naiads in streams and other aquatic habitat, and are considered a threat to the Pacific Hawaiian damselfly since this species has an aquatic naiad life stage. In addition, the presence of backswimmers inhibits the foraging behavior of damselfly naiads, with negative consequences for development and survival. Backswimmers are reported on all of the main Hawaiian Islands except Kahoolawe.

• The absence of Hawaiian damselflies, including the aquatic Pacific Hawaiian damselfly, in streams and other aquatic habitat on the main Hawaiian Islands is strongly correlated with the presence of predatory nonnative fish as documented in numerous observations and reports (Englund 1999, p. 237; Englund 2004, p. 27; Englund *et al.* 2007, p. 215), thereby suggesting that nonnative predatory fishes eliminate native Hawaiian damselflies from these aquatic habitats. There are over 51 species of nonnative fishes established in freshwater habitats on the Hawaiian Islands from sea level to over 3,800 ft (1,152 m) in elevation (Devick 1991, p. 190; Staples and Cowie 2001, p. 32; Brasher 2003, p. 1054; Englund 1999, p. 226; Englund and Polhemus 2001; Englund 2004, p. 27; Englund *et al.* 2007, p. 232). Predation by nonnative fishes is considered to pose a significant and immediate threat to the Pacific Hawaiian damselfly due to its aquatic habit.

• Englund *et al.* (2007, pp. 215, 219) found a strong correlation between the presence of nonnative bullfrogs and the absence of Hawaiian damselflies. Bullfrogs are reported on all of the main Hawaiian Islands, except Kahoolawe and Niihau. The Pacific Hawaiian damselfly is likely threatened by bullfrogs, due to their shared preference for similar habitat, and the flying earwig Hawaiian damselfly may also be threatened within its riparian habitat by the bullfrog, which is capable of breeding within small pools of water.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Inadequate Habitat Protection

Currently, there are no Federal, State, or local laws, treaties, or regulations that specifically conserve or protect the flying earwig Hawaiian damselfly or the Pacific Hawaiian damselfly from the threats described in this proposed rule. The State of Hawaii considers all natural flowing surface water (streams, springs, and seeps) as State property (Hawaii Revised Statutes 174c 1987), and the Hawaii Department of Land and Natural Resources (DLNR) has management responsibility for the aquatic organisms in these waters (Hawaii Revised Statutes Annotated, 1988, Title 12; 1992 Cumulative Supplement). Thus, damselfly populations associated with streams, seeps, and springs are under the jurisdiction of the State of Hawaii, regardless of the ownership of the property across which the stream flows. This includes all populations of the Pacific Hawaiian damselfly.

The State of Hawaii manages the use of surface and ground water resources through the Commission on Water Resource Management (Water Commission), as mandated by the 1987 State Water Code (State Water Code, Hawaii Revised Statutes Chapter 174C-71, 174C-81-87, and 174C-9195 and Administrative Rules of the State Water Code, Title 13, Chapters 168 and 169). In the State Water Code, there are no formal requirements that project proponents or the Water Commission protect the habitats of fish and wildlife prior to issuance of a permit to modify surface or ground water resources.

The maintenance of instream flow, which is needed to protect the habitat of damselflies and other aquatic wildlife, is regulated by the establishment of standards on a stream-by-stream basis (State Water Code, Hawaii Revised Statutes Chapter 174C-71 and Administrative Rules of the State Water Code, Title 13, Chapter 169). Currently, the interim instream flow standards represent the existing flow conditions in streams in the State (as of June 15, 1988, for Molokai, Hawaii, Kauai and east Maui; and October 19, 1988, for west Maui and leeward Oahu) (Administrative Rules of the State Water Code, Title 13, Chapter 169-44-49). However, the State Water Code does not provide for permanent or minimal instream flow standards for the protection of aquatic wildlife. Instead, modification of instream flow standards and stream channels can be undertaken at any time by the Water Commission or via public petitions to revise flow standards or modify stream channels in a specified stream (Administrative Rules of the State Water Code, Title 13, Chapter 169-36). Additionally, the Water Commission must consider economic benefits gained from out-of-stream water uses, and is not required to balance these benefits against instream benefits to aquatic fish and wildlife. Consequently, any stabilization of stream flow for the protection of Pacific Hawaiian damselfly habitat is subject to modification at a future date.

The natural value of Hawaii's stream systems has been recognized under the State of Hawaii Instream Use Protection Program (Administrative Rules of the State Water Code, Title 13, Chapter 169-20(2)). In the Hawaii Stream Assessment Report (1990), prepared in coordination with the National Park Service, the State Water Commission identified high quality rivers or streams, or portions of rivers or streams that may be placed within a wild and scenic river system. This report recommended that streams meeting certain criteria be protected from further development. However, there is no formal or institutional mechanism within the State's Water Code to designate and set aside these streams, or to identify and protect stream habitat for Hawaiian damselflies.

Existing Federal regulatory mechanisms that may protect Hawaiian damselflies and their habitat are also inadequate. The Federal Energy Regulatory Commission (FERC) has very limited jurisdiction in Hawaii. Hawaii's streams are isolated on individual islands and run quickly down steep volcanic slopes. There are no interstate rivers in Hawaii, few if any streams crossing Federal land, and no Federal dams. Hawaii's streams are generally not navigable. Thus, licensing of hydroelectric projects in Hawaii generally does not come under the purview of FERC, although hydropower developers in Hawaii may voluntarily seek licensing under FERC.

The U.S. Army Corps of Engineers (COE) also has some regulatory control over modifications of freshwater streams in the United States. For modifications (e.g., discharge of fill) of streams with an average annual flow greater than 5 cubic ft per second (cfs), the COE can issue individual permits under section 404 of the Clean Water Act. These permits are subject to public review, and must comply with the Environmental Protection Agency's 404(b)(1) guidelines and public comment requirements. However, in issuing these permits, the COE does not establish instream flow standards as a matter of policy. The COE normally considers that the public interest for instream flow is represented by the state water allocation rights or preferences (Regulatory Guidance Letter No 85-6), and project alternatives that supersede, abrogate, or otherwise impair the state water quantity allocations are not normally addressed as alternatives during permit review.

In cases where the COE district engineer does propose to impose instream flow standard on an individual permit, this flow standard must reflect a substantial national interest. Additionally, if this instream flow standard is in conflict with a State water quantity allocation, then it must be reviewed and approved by the Office of the Chief Engineer in Washington, D.C. (Regulatory Guidance Letter No 85-6). Currently, the setting of instream flow standards sufficient to conserve Hawaiian damselflies is not a condition that would be considered or included in a Hawaii Department of Agriculture individual permit (DLNR, Commission on Water Resource Management 2006, p. 2).

The COE may also authorize the discharge of fill into streams with an average annual flow of less than 5 cfs. These discharges are covered under a nationwide permit (33 CFR 330). This permit is designed to expedite small-scale activities that the COE considers to have only minimal environmental impacts (33 CFR 330.1(b)). The Service and the Hawaii DLNR have only 15 days to provide substantive site-specific comments prior to the issuance of a nationwide permit. Given the complexity of the impacts on Hawaiian damselflies from stream modifications and surface water diversions, the remoteness of project sites, and the types of studies necessary to determine project impacts and mitigation, this limited comment period does not allow time for an adequate assessment of impacts.

One population of the Pacific Hawaiian damselfly occurs in Palikea Stream on Maui, which flows through Haleakala National Park. On Molokai, populations of this damselfly species occur at the mouth of Pelekunu Stream, which flows through a preserve managed by The Nature Conservancy, and in lower Waikolu Stream, which flows through Kalaupapa National Historic Park. However, the landowners do not own the water rights to any of the streams, and thus cannot fully manage the conservation of any of these damselfly populations.

Because there are currently no Federal, State, or local laws, treaties, or regulations that specifically conserve or protect habitat of the flying earwig Hawaiian damselfly or the Pacific Hawaiian damselfly from the threats described in this proposed rule, all of these threats remain immediate and significant. The habitat of both species continues to be reduced, degraded, and altered by past and present manmade alterations to streams and riparian zones and by the indirect impacts of nonnative plant and animal species to remaining habitat areas.

Inadequate Protection from Introduction of Nonnative Species

As discussed above (see *Factor C. Disease or Predation*), predation by nonnative species (fish, insects, and bullfrogs) is one of the most significant threats to the survival of the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly.

Based on historical and current rates of aquatic species introductions (both purposeful and accidental), existing State and Federal regulatory mechanisms are not adequately preventing the spread of nonnative species between islands and watersheds in Hawaii. The Hawaii Department of Agriculture has administrative rules in place that address importation of nonnative species and establish a permit process for such activities (Hawaii Administrative Rules §4-71). The Division of Aquatic Resources within the Hawaii Department of Land and Natural Resources (HDLNR) has authority to seize, confiscate, or destroy as a public nuisance, any fish or other aquatic life found in any waters of the State and whose importation is prohibited or restricted pursuant to rules of the Department of Agriculture (Section 187A-2(4 H.R.S.§187A-6.5)). Although State and Federal regulations are now firmly in place to prevent the unauthorized entry of nonnative aquatic species into the State of Hawaii, movement of species between islands and from one watershed to the next remains problematic even while prohibited (HDOA 2003, pp. 2/12 – 2/14). For example, while unauthorized movement of an aquatic species from one watershed to the next may be prohibited, there simply is not enough government funding to adequately enforce such regulation or to provide for sufficient inspection services and monitoring, although this priority need is recognized (Cravalho 2009). Furthermore, due to the complexity of the pathways of invasion by aquatic species (i.e., intentional, inadvertent, and by forces of nature), many components contributing to the problem may be better addressed through greater public outreach and education (Montgomery 2009).

On the basis of the above information, existing regulatory mechanisms do not adequately protect the flying earwig Hawaiian damselfly or the Pacific Hawaiian damselfly from the threat of established nonnative species (particularly fish and insect species) spreading between islands and watersheds, where they may prey upon or directly compete with the two damselfly species for food and space. Because current Federal, State, and local laws, treaties, and regulations are inadequate to prevent the spread of nonnative aquatic animals between islands and watersheds, the impacts from these introduced threats remain immediate and significant. From habitat-altering nonnative plant species to predation or competition caused by frogs, nonnative fish, and insect species, the Pacific Hawaiian damselfly and the flying earwig Hawaiian damselfly are immediately and significantly threatened by former and new plant and animal introductions within the damselflies' remaining habitat.

Summary of Factor D

The aquatic habitat of the flying earwig and the Pacific Hawaiian damselflies is under the jurisdiction of the State of Hawaii, which also has management responsibility for aquatic organisms. However, the State Water Code has no regulatory mechanism in place to protect these species or their habitat. The State Water Code does not provide for permanent or minimum instream flow standards for the protection of aquatic ecosystems upon which these damselfly species depend, and does not contain a regulatory mechanism for identifying and protecting damselfly habitat under a wild and scenic river designation.

To date, administration of the Clean Water Act permitting program by the U.S. Army Corps of Engineers has not provided substantive protection of damselfly habitat, including any requirements for retention of adequate instream flows.

Existing State and Federal regulatory mechanisms are not preventing the spread of nonnative animal species between islands and watersheds. Predation by nonnative animal species poses a major ongoing threat to the flying earwig and the Pacific Hawaiian damselflies. Because existing regulatory mechanisms are inadequate to maintain aquatic habitat for the damselflies and to prevent the spread of nonnative species, the inadequacy of existing regulatory mechanisms is considered to be a significant and immediate threat.

Factor E. Other Natural or Manmade Factors Affecting [Their] Continued Existence

Small Numbers of Populations and Individuals

Species that are endemic to single islands or known from few, widely dispersed locations are inherently more vulnerable to extinction than widespread species because of the higher risks from genetic bottlenecks, random demographic fluctuations, climate change, and localized catastrophes such as hurricanes, landslides, and drought (Lande 1988, p. 1,455; Mangel and Tier 1994, p. 607; Pimm *et al.* 1988, p. 757). These problems are further magnified when populations are few and restricted to a limited geographic area, and the number of individuals is very small. Populations with these characteristics face an increased likelihood of stochastic extinction due to changes in demography, the environment, genetics, or other factors, in a process described as an ''extinction vortex'' by Gilpin and Soulé (1986, pp. 24-25). Small, isolated populations often exhibit a reduced level of genetic variability or genetic depression due to inbreeding, which diminishes the species' capacity to adapt and respond to environmental changes, thereby lessening the probability of long-term persistence (e.g., Frankham 2003, pp. S22-S29; Soule 1980, pp. 151-169). The problems associated with small population size and vulnerability to random demographic fluctuations or natural catastrophes are further magnified by synergistic interactions with other threats, such as those discussed above (Factors A–C).

Jordan *et al.* (2007, p. 247) showed in their genetic and comparative phylogeography analysis (study of historical processes responsible for genetic divergence within a species) of four *Megalagrion* species that the Pacific Hawaiian damselfly may be more susceptible to problems linked to low genetic diversity compared to other Hawaiian damselfly species. Both Maui and Molokai populations of this species were analyzed, and results suggested that the Pacific Hawaiian damselfly may not disperse well across both land and water, which may have led to the low genetic diversity observed in the two populations sampled. The authors proposed that populations of the Pacific Hawaiian damselfly be monitored and managed to understand the conservation needs of this species and the threat of population bottlenecks (Jordan *et al.* 2007, p. 258). Unfortunately, this study did not include an analysis of the flying earwig Hawaiian damselfly. However, given that this species may now be reduced to a single population, the potential loss of genetic diversity is a concern for the flying earwig Hawaiian damselfly as well.

The small number of remaining populations of the flying earwig Hawaiian damselfly (now possibly reduced to a single remaining population) puts this species at significant risk of extinction from stochastic events, such as hurricanes, landslides, or prolonged drought (Jones *et al.* 1984, p. 209). For example, Polhemus (1993, p. 87) documented the extirpation of a related damselfly species, *Megalagrion vagabundum*, from the entire Hanakapiai Stream system on Kauai as a result of the impacts from Hurricane Iniki in 1992. Such stochastic events thus pose the threat of immediate extinction of a species with a very small and geographically restricted distribution, as in the case of the flying earwig Hawaiian damselfly.

Summary of Factor E

The threat to the flying earwig and Pacific Hawaiian damselflies from limited numbers of populations and individuals is significant and immediate for the following reasons:

- Each of these species is subject to potentially reduced reproductive vigor due to inbreeding depression, particularly the flying earwig Hawaiian damselfly which is now apparently restricted to one population;
- Each of these species is subject to reduced levels of genetic variability that may diminish their capacity to adapt and respond to environmental changes, thereby lessening the probability of their long-term persistence;
- Since there may be only one remaining population of the flying earwig Hawaiian damselfly that occurs in a relatively restricted geographic location, a single catastrophic event, such as a hurricane or landslide, could result in the extinction of the species. Likewise, the Pacific Hawaiian damselfly, with several small, widely dispersed populations, would be vulnerable to the extirpation of remaining populations; and
- Species with few populations and a small number of individuals, such as the Pacific Hawaiian damselfly and flying earwig Hawaiian damselfly, are less resilient to threats that might otherwise have a relatively minor impact on a larger population. For example, the reduced availability of breeding habitat or an increase in predation of naiads that might be absorbed in a relatively large population could result in a significant decrease in survivorship or reproduction of a relatively small, isolated population. The small population size of these two species thus magnifies the severity of the impact of the other threats discussed in this proposed rule.

Conclusion and Proposed Listing Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly. We find that both of these species face immediate and significant threats throughout their ranges:

- Both the Pacific Hawaiian damselfly and the flying earwig Hawaiian damselfly face threats from past and present destruction, modification, and curtailment of their habitats, primarily from: agriculture and urban development; stream diversion, channelization, and dewatering; feral pigs and nonnative plants; and from stochastic events like hurricanes, landslides, and drought. The changing environmental conditions that may result from climate change (particularly rising temperatures) are also likely to threaten these two damselfly species (compounded because of the two species' small population sizes and limited distributions), although currently there is limited information on the exact nature of these impacts (see discussion under Factor A).
- The only known population of the flying earwig Hawaiian damselfly is immediately and significantly threatened by potential recreational collection (Factor B).
- Both the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly are subject to an immediate and significant threat of predation by nonnative insects (ants) and bullfrogs. The Pacific Hawaiian damselfly is also similarly threatened by backswimmers and nonnative fish (Factor C).
- The inadequacy of existing regulatory mechanisms (e.g., inadequate

protection of stream habitat and inadequate protection from the introduction of nonnative species) poses a threat to both species of Hawaiian damselfly, as discussed under Factor D above.

• Both of these species face an immediate and significant threat from extinction due to factors associated with small numbers of populations and individuals as discussed under Factor E above.

All of the above threats are exacerbated by the inherent vulnerability of the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly to extinction from stochastic events at any time because of their endemism (indigenousness), small numbers of individuals and populations, and restricted habitats.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' We find that each of these two species endemic to Hawaii is presently in danger of extinction throughout its entire range, based on the immediacy, severity, and scope of the threats described above. Therefore, on the basis of the best available scientific and commercial information, we propose listing the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly as endangered in accordance with sections 3(6) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is threatened or endangered throughout all or a significant portion of its range. Each of the two endemic damselfly species proposed for listing in this rule is highly restricted in its range and the threats occur throughout its range. Therefore, we assessed the status of each species throughout its entire range. In each case, the threats to the survival of these species occur throughout the species' range and are not restricted to any particular significant portion of that range. Accordingly, our assessment and proposed determination applies to each species throughout its entire range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies, and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprised of species experts, Federal and State agencies, non-government organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available from our website (*http://www.fws.gov/endangered*), or from our Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, non-governmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private and State lands.

If these species are listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and non-governmental organizations. In addition, pursuant to section 6 of the Act, the State of Hawaii would be eligible for Federal funds to implement management actions that promote the protection and recovery of the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants*.

Although the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly are only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for these species. Additionally, we invite you to submit any new information on these species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions within the species' habitat that may require

conference or consultation or both as described in the preceding paragraph include, but are not limited to: Army Corps of Engineers involvement in projects, such as the construction of roads, bridges, and dredging projects, subject to section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) and section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*); U.S. Environmental Protection Agency authorized discharges under the National Pollutant Discharge Elimination System (NPDES); U.S. Department of Agriculture involvement in the release or permitting of the release of biological control agents under the Federal Plant Pest Act (7 U.S.C. 150aa-150jj); military training and related activity carried out by the U.S. Department of Defense; and projects by the Natural Resources Conservation Service, National Park Service, U.S. Fish and Wildlife Service, Federal Highways Administration, and the U.S. Department of Housing and Urban Development.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt any of these), import, export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Introduction of nonnative species that compete with or prey upon the two damselflies, such as the introduction of competing, nonnative insects or predatory fish to the State of Hawaii;

(3) The unauthorized release of biological control agents that attack any life stage of these species;

(4) Unauthorized modification of the channel or water flow of any stream or removal or destruction of emergent aquatic vegetation in any body of water in which the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly are known to occur; and

(5) Unauthorized discharge of chemicals or fill material into any waters in which the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly are known to occur.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, OR 97232-4181 (telephone 503-231-2063; facsimile 503-231-6243).

If these two Hawaiian damselflies are listed under the Act, the State of Hawaii's Endangered Species Act (HRS, Sect. 195D–4(a)) is automatically invoked, which would also prohibit take of these species and encourage conservation by State government agencies. Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, Sect. 195D–5(c)). Funds for these activities could be made available under section 6 of the Act (Cooperation with the States). Thus, the Federal protection afforded to these species by listing them as endangered species will be reinforced and supplemented by protection under State law.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(I) essential to the conservation of the species and

(II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public access to private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by the landowner. Where a landowner seeks or requests Federal agency funding or authorization that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the Federal action

agency's and landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of the critical habitat.

For inclusion in a critical habitat designation, habitat within the geographical area occupied by the species at the time it was listed must contain the physical and biological features essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas containing the physical and biological features, which are the Primary Constituent Elements (PCEs) laid out in the appropriate quantity and spatial arrangement that are essential to the conservation of the species. Under the Act and regulations at 50 CFR 424.12, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species and that designation limited to those areas occupied at the time of listing would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub.L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that are important to the conservation of the species, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. Areas that support populations are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts warrants otherwise.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. We find that the designation of critical habitat for the two damselfly species addressed in this rule will benefit them by: (1) Triggering consultation under section 7 of the Act for Federal actions where consultation would not otherwise occur because, for example, the affected area has become unoccupied by the species or the occupancy is in question; (2) focusing conservation efforts on the most essential habitat features and areas; (3) providing educational benefits about the species to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

The primary regulatory effect of critical habitat is the section 7(a)(2) requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. On the island of Maui, one population of the Pacific Hawaiian damselfly occurs in a stream that flows through Haleakala National Park, and on the island of Molokai, one population of this species occurs in the lower section of a stream that flows through Kalaupapa National Historical Park. The National Park Service regulations and Federal laws protect all animals in national parks from harassment or destruction. Nevertheless, lands that may be designated as critical habitat in the future for this species may be subject to Federal actions that trigger the section 7 consultation requirement, such as the granting of Federal monies for conservation projects or the need for Federal permits for projects, such as the construction and maintenance of aqueducts and bridges subject to section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*). There may also be some educational or informational benefits to the designation of critical habitat. Educational benefits include the notification of landowners, land managers, and the general public of the importance of protecting the habitat of these species. Critical habitat may play a role in protecting habitat for future reintroductions of a species as well. For example, although the flying earwig Hawaiian damselfly formerly inhabited areas that are not currently occupied by the species, if those currently unoccupied areas are determined to be essential to the survival and recovery of the species, they may be proposed for designation of critical habitat. This would alert the public that these areas are important for the future recovery of the species, as well as invoke the protection of these areas under section 7 of the Act with regard to any possible Federal actions in that area. These aspects of critical habitat designation would potentially benefit the conservation of both the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly. Although collection has been identified as a threat to the flying earwig Hawaiian damselfly, we believe that collection poses a potential threat to this rare species regardless of the designation of critical habitat. Therefore, since we have determined that the identification of critical habitat will not increase the degree of threats to these species and because the designation may provide

some measure of benefit, we find that designation of critical habitat is prudent for both the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly.

Critical Habitat Determinability

As stated above, section 4(a)(3) of the Act requires the designation of critical habitat concurrently with the species' listing ''to the maximum extent prudent and determinable.'' Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(A) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(B) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

When critical habitat is not determinable, the Act provides for an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and the regulations at 50 CFR 424.12, in determining which areas occupied by the species at the time of listing to designate as critical habitat, we consider the physical and biological features essential to the conservation of the species which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing (or development) of offspring; and generally

(5) Habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

As required by 50 CFR 424.12(b), we are to list the known primary constituent elements (PCEs) with our description of critical habitat. The the physical and biological features are the PCEs laid out in the appropriate quantity and spatial arrangement, which are essential to the conservation of the species. These may be based upon, but are not limited to: roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetlands or drylands, water quality or quantity, vegetation type, plant host species and associated pollinators, geological formations, tides, and specific soil types.

We are currently unable to identify the physical and biological features that are considered essential to the conservation of either damselfly species, because information on these is not available at this time. Key features of the life histories of these damselfly species, such as longevity, larval stage requirements, and fecundity, remain unknown. The aquatic and associated upland habitats where the populations of the Pacific Hawaiian damselfly are found have been modified and altered by development and agriculture; stream diversions, channelization, dewatering; and nonnative plants. In addition, introduced ants, backswimmers, bullfrogs, and predatory nonnative fish have altered and degraded the habitat for the Pacific Hawaiian damselfly. Likewise, the uluhe moist talus slope habitats where populations of the flying earwig Hawaiian damselfly once occurred have been modified and altered by agriculture; stream diversions, channelization, dewatering; and the presence of feral pigs, nonnative plants, and introduced ants and bullfrogs. Historically, both of these damselfly species were much more widespread and occurred in habitats found on several different islands. Because over a century has elapsed since these species were observed in an unaltered environment, the optimal conditions that provide the biological or ecological requisites of these species are not known. As described above, we can surmise that habitat degradation from a variety of factors and predation by a number of nonnative species has contributed to the decline of these species; however, we do not know the physical or biological features that are essential for either of the two damselflies addressed in this proposed rule. As we are unable to identify the physical and biological features essential to the conservation of these species, we are unable to identify areas that contain these features.

Although we have determined that the designation of critical habitat is prudent for the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly, the biological needs of these species are not sufficiently well known to permit identification of the physical and biological features that may be essential for the conservation of the species, or those areas essential to the conservation of the species. Therefore, we find that critical habitat for the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly is not determinable at this time. We intend to continue gathering information regarding the essential life history requirements of the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly to facilitate identification of essential features and areas. We will evaluate the needs of the flying earwig Hawaiian damselfly and the Pacific Hawaiian damselfly within the ecological context of the broader ecosystems in which they occur, similar to the approach that we recently used in our proposal to designate critical habitat for 47 species endemic to the island of Kauai (October 21, 2008; 73 FR 62592), and will consider the utility of using this approach for these species as well.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our proposed rule is based on scientifically sound data, assumptions, and analyses. We have posted our proposed peer review plan on our website at *http://www.fws.gov/pacific/informationquality/index.htm*. We will send these peer reviewers copies of this proposed rule, immediately following publication in the **Federal Register**. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposal to list two Hawaiian damselfly species as endangered and our decision regarding critical habitat for these species.

We will consider all comments and information we receive during the comment period on this proposed rule during preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of of publication of this proposal in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Persons needing reasonable accommodations to attend and participate in a public hearing should contact the Pacific Islands Fish and Wildlife Office at 808-792-9400, as soon as possible. To allow sufficient time to

process requests, please call no later than one week before the hearing date. Information regarding this proposed rule is available in alternative formats upon request.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the ''**ADDRESSES**'' section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov* or upon request from the Field Supervisor, Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary authors of this document are the staff members of the Pacific Islands Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding entries for ''Damselfly, flying earwig Hawaiian'' and ''Damselfly, Pacific Hawaiian'' to the List of Endangered and Threatened Wildlife in alphabetical order under Insects to read as follows:

§17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* * * * * * *							
INSECTS							
* * * * * * *							
Damselfly, flying earwig Hawaiian	*Megalagrion nesiotes*	U.S.A. (HI)	NA	E	TBD	NA	NA
Damselfly, Pacific Hawaiian	*Megalagrion pacificum*	U.S.A. (HI)	NA	E	TBD	NA	NA
* * * * * *							

Dated: June 25, 2009.

Marvin E. Moriarty,

Acting Director, U.S. Fish and Wildlife Service

[FR Doc. E9–16087 Filed 7–7– 09; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R4–ES–2009–0022; 92210–1117–000–B4]

Endangered and Threatened Wildlife and Plants; 90–Day Finding on a Petition To List the Coqui Llanero (Eleutherodactylus juanariveroi) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (the Service), announce a 90-day finding on a petition to list coqui llanero (*Eleutherodactylus juanariveroi*), a tree frog, as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). Following our review of the petition, we find that it provides substantial scientific or commercial information indicating that listing this species may be warranted. Therefore, with the publication of this notice, we initiate a status review to determine if listing the coqui llanero is warranted. To ensure that the status review is comprehensive, we request scientific and commercial data and other information regarding this species. We will initiate a determination on critical habitat for this species if and when we initiate a listing action.

DATES: We made the finding announced in this document on July 8, 2009. To allow us adequate time to conduct this review, we request that information be submitted on or before September 8, 2009.

ADDRESSES: You may submit information by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, *Attn:* FWS–R4–ES–2009–0022; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Solicited section below for more details).

FOR FURTHER INFORMATION CONTACT: Edwin E. Muñiz, Field Supervisor, Caribbean Ecological Services Field Office, P.O. Box 491, Boquerón, PR 00622; by telephone, (787) 851–7297; or by facsimile, (787) 851–7440. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, the Act (16 U.S.C. 1531 *et seq.*) requires us to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we seek information on the coqui llanero. We request information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the coqui llanero. We seek information regarding:

(1) The species' historical and current status and distribution, its biology and ecology, and ongoing conservation measures for the species and its habitat;

(2) Information relevant to the factors that are the basis for our making any listing determination for a species under section 4(a) of the Act, which are:

(a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) overutilization for commercial, recreational, scientific, or educational purposes;

(c) disease or predation;

(d) the inadequacy of existing regulatory mechanisms; or

(e) other natural or manmade factors affecting its continued existence and threats to the species or its habitat; and

(3) Information on the effects of climate change, sea-level change, and water temperature change on the distribution and abundance of the species.

If we determine that listing the species is warranted, we intend to propose critical habitat to the maximum extent prudent and determinable at the time we propose the listing. Therefore, with regard to areas within the geographical range currently occupied by the coqui llanero, we also request data and information on what may constitute physical or biological features essential to the conservation of the species, where these features are currently found, and whether any of these features may require special management considerations or protection. In addition, we request data and information regarding whether there are areas outside the geographical area occupied by the species that are essential to the conservation of the species. Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of the Act.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.'' Based on the status review, we will issue a 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold your personal information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Caribbean Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that

the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly commence a status review of the species.

On May 22, 2007, we received a petition dated May 11, 2007, from the Caribbean Primate Research Center requesting that we list the coqui llanero as endangered under the Act. The petition also requested that we designate critical habitat concurrently with listing, if listing occurs. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a). In a July 23, 2007, letter to the petitioners, we responded that we had reviewed the petition and determined that an emergency listing was not necessary. We also stated that we would not be able to address the petition until funding became available. Actions in this petition were precluded by court orders and settlement agreements for other listing actions that required nearly all of our listing funds for fiscal year 2007. However, in fiscal year 2008, funding became available, enabling us to address this petition. Accordingly, this finding addresses the petition. On January 22, 2009, we received an amended petition dated January 13, 2008. The amended petition included literature references published in 2007, provided photographs and maps, and updated information on current threats to the species.

Species Information

Neftali Rios-López and Richard Thomas first collected the coqui llanero (*Eleutherodactylus juanariveroi*), a tree frog, in 2005 from a seasonally flooded herbaceous wetland near the U.S. Naval Security Group Activity Sabana Seca (USNS–GASS) property and the Caribbean Primate Research Center, Toa Baja, Puerto Rico. The coqui llanero was later described as a new species of the genus *Eleutherodactylus,* family Leptodactylidae, in 2007. Although the new species is similar to the *Eleutherodactylus gryllus,* differences in morphological ratios, body coloration, frequency of calls, call structure, DNA, and habitat association indicate that it is a well-differentiated species (Rios-López and Thomas 2007, pp. 53–60; Caribbean Primate Research Center 2007, p. 1; Caribbean Primate Research Center 2008, p. 1). At the time of this determination, this endemic Puerto Rican tree frog is only known from this type locality (Rios-López and Thomas 2007, p. 60; Caribbean Primate Research Center 2007, p. 1; Departamento de Recursos Naturales y Ambientales (DRNA) 2007a, p. 3; DRNA 2007b, p. 1; Caribbean Primate Research Center 2008, p. 2). It is only known to occur in the Sabana Seca-Ingenio Ward, Toa Baja, a municipality of Puerto Rico located on the northern coast, north of Toa Alta and Bayamón; east of Dorado; and west of Cataño, approximately 12 miles (20 kilometers) from San Juan.

The coqui llanero is the smallest Puerto Rican *Eleutherodactylus* and is the only known herbaceous-wetland specialist in Puerto Rico within the taxonomic genus *Eleutherodactylus.* It has a mean snout-vent length of 14.7 millimeters (mm) (0.58 inches (in)) in males, and 15.8 mm (0.62 in) in females. The nares (nasal passages) are prominent, and a ridge connects them behind the snout tip, giving the tip a somewhat squared-off appearance. The species has well-developed glands through its body; its dorsal coloration is yellow to yellowish brown with a light, longitudinal, reversed comma mark on each side; and its mid-dorsal zone is broadly bifurcated (divided into two branches). The species' communication call consists of a series of short high-pitched notes with call duration varying from 4 to 21 seconds. The advertisement call has the highest frequency among all Puerto Rican *Eleutherodactylus,* between 7.38 and 8.28 kilohertz. The calling activity starts at approximately 4:30 p.m. and decreases significantly before midnight. Egg clutches comprise one to five eggs and are found on leaf axils or leaf surfaces between 0.4 meters (m) (1.3 feet (ft)) and 1.2 m (3.9 ft) above water level (Rios-López and Thomas 2007, pp. 53–62). Observers did not see parental care in the field (Caribbean Primate Research Center 2007, p. 3; Caribbean Primate Research Center 2008, p. 5).

The coqui llanero is only known to occur in the Sabana Seca-Ingenio Ward, Toa Baja type locality, which consists of approximately 180 hectares (ha) (444.8 acres (ac)) of seasonally flooded palustrine (marshy, non-tidal wetlands substantially covered with emergent vegetation such as trees, shrubs, and moss, or fresh-water herbaceous wetland), at 17 m (55.8 ft) above sea level (Rios-López and Thomas 2007, p. 60; Caribbean Primate Research Center 2007, p. 2). According to the petitioner, the species' habitat may represent a relict of an endemic habitat type (Rios-López and Thomas 2007, p. 63). The habitat is categorized as within the subtropical moist forest life zone (Ewel and Whitmore 1973, pp. 20–38). The main vegetation in this herbaceous wetland consists of toothed midsorus fern (*Blechnum serrulatum*), willdenow's maiden fern (*Thelypteris interrupta*), bulltongue arrowhead (*Sagittaria lancifolia*), flat sedges (*Cyperus* sp.), spike rushes (*Eleocharis* sp.), and vines and grasses (Caribbean Primate Research Center 2007, p. 2; Caribbean Primate Research Center 2008, p. 2).

The majority of the individuals were found perching and calling on the toothed midsorus fern and willdenow's maiden fern. Reproduction, however, only occurs on the bulltongue arrowhead (Caribbean Primate Research Center 2007, p. 2; Caribbean Primate Research Center 2008, p. 4). All specimens (45 individuals) were collected while perching, sitting, or calling on herbaceous vegetation, mainly on ferns. Egg clutches were found on leaf axils (21 egg clutches) or leaf surfaces (3 egg clutches) of only *S. lancifolia* (Rios-López and Thomas 2007, p. 60).

Five-Factor Evaluation

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth procedures for adding species to the Federal List of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In making this 90-day finding, we evaluated whether information regarding the coqui llanero, as presented in the petition and clarified by information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our

evaluation of this information is presented below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

According to the petition, the existence of the coqui llanero is imperiled due to the existing and imminent threatened destruction, modification, and curtailment of its wetland habitat and geographic range. The petitioner identified three main threats under Factor A: (1) The construction of a go-kart and motorbike racetrack in the coqui llanero's wetland habitat, (2) urban development, and (3) contamination from the Toa Baja Municipal Landfill. The petition claims that the construction and operation of a go-kart and motorbike racetrack within the vicinity of the habitat of the coqui llanero are presently affecting the species' habitat. The petition also claims that contamination with oil, gasoline, and other pollutants due to this racetrack is a threat since the area is prone to flooding.

Information in our files (DRNA 2007b, pp. 23–25) supports the petitioner's contention that the construction and operation of a racetrack for motorbikes and go-karts located north of the habitat would have negative impacts and is a current threat to the species. The Commonwealth of Puerto Rico's final designation of essential critical natural habitat for the coqui llanero (see Factor D discussion below) shows a photograph of the flooded racetrack (DRNA 2007b, p. 25). The text below the illustration specifies that the habitat of the coqui llanero was filled for the construction of racetrack, and that as a result of flooding events, contaminants such as oil and gasoline from the track spilled frequently into the wetland (DRNA 2007b, p. 25).

As described in the petition, the Toa Baja Landfill, located inland on top of a limestone hill, is another major threat to the coqui llanero. The petition states that polluted waters from the continued operation of this landfill may pose a serious threat to the coqui llanero, because underground-contaminated waters and leachates reaching the wetlands may change water quality, soils, and consequently plant composition (Caribbean Primate Research Center 2007, p. 4; Caribbean Primate Research Center 2008, pp. 6–9).

The petitioner also contends that the species and its habitat are threatened by large-scale residential projects that are currently planned within and around the coqui llanero habitat located within the south tract of the former U.S. Navy NSGA Sabana Seca. The petitioner states that the Municipality of Toa Baja (as part of its land use plans) intends to zone the habitat, an area formerly part of the Sabana Seca Navy Base, for residential development. The petitioner claims that the U.S. Navy, in collaboration with the Municipality of Toa Baja, has selected residential development as the ''preferred alternative'' for the wetlands area within the south tract of the former navy base, which would represent the destruction of 168 ha (416 ac) of wetlands, including the coqui llanero's habitat.

In 2005, the U.S. Navy consulted with the Service on the sale of the former USNS–GASS property and reuse of the land for residential purposes. The proposed disposal mechanism for Sabana Seca involved the marketing and sale of the property. At that time, we were not aware of the existence of this new species and its habitat within the property. Therefore, the Service was only concerned about the possible adverse effects to wetland resources of future re-use and development of this area.

The petitioners assert that the above issues substantially impact the distribution and abundance of the coqui llanero, as well as its habitat in all of its range. Based on the information provided in the petition and available in our files, we conclude that the petitioners have presented substantial information to indicate that the present or threatened destruction or modification of habitat or range may present a threat to this species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Neither the petition nor information in our files presents information indicating that overutilization of coqui llanero for commercial, recreational, scientific, or educational purposes is a threat. Therefore, we find that the petition does not present substantial information to indicate that the overutilization for commercial, recreational, scientific, or educational purposes may present a threat to the coqui llanero.

C. Disease or Predation

Neither the petition nor information in our files presents information indicating that disease or predation are significant threats to the coqui llanero. Therefore, we find that the petition does not present substantial information to indicate that disease or predation may present significant threats to the coqui llanero.

D. Inadequacy of Existing Regulatory Mechanisms

The petitioner claims that we need to list the species and designate critical habitat for it because no other regulatory mechanism protecting the species or its habitat is in place. However, according to information in our files, the Department of Natural and Environmental Resources (DNER) for the Commonwealth of Puerto Rico designated the species as Critically Endangered and designated its habitat as Essential Critical Natural Habitat under Commonwealth Law 241 and Regulation 6766 in July 2007. The designation as ''critically endangered'' prohibits any person from taking the species: It prohibits harm, possession, transportation, destruction, or import or export of individuals, nests, eggs or juveniles without previous authorization from the Secretary of DNER. Article 2 of Regulation 6766 includes all prohibitions.

DNER designated approximately 200 ha (509 ac) as ''essential critical natural habitat'' in accordance with Regulation 6766. Article 4.05 of this regulation specifies that an area designated as essential critical natural habitat cannot be modified unless scientific studies determine that such designation should be changed. Article 2.06 of this regulation prohibits collecting, harassing, hunting, and removing, among other activities, of listed animals within the jurisdiction of Puerto Rico.

Because the coqui llanero's habitat is the first to be designated as Essential Critical Natural Habitat under Commonwealth Law 241 and Regulation 6766, no one is certain of the level of protection this law will provide. Therefore, we conclude that the petitioners have presented substantial information to indicate that existing regulatory mechanisms may be inadequate to protect the coqui llanero.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The petitioner asserts that the species is at risk of extinction throughout its range as a result of its extremely limited distribution of approximately 200 ha (494 ac). With European colonization, land was extensively drained and modified for agricultural practices. A shift in the Puerto Rican economy from agriculture to industry led to land abandonment, and this species' habitat is thought to represent a relic of an endemic herbaceous palustrine wetland. Based on the information provided in the petition and information in our files, the species is currently only known

from the Sabana-Seca-Ingenio Ward (the locality in which the species was described), a seasonally flooded palustrine herbaceous wetland in Toa Baja (Rios-López and Thomas 2007, p. 60; Caribbean Primate Research Center 2007, p. 2; DRNA 2007a, pp. 1–11; and DRNA 2007b, pp. 1–38; Caribbean Primate Research Center 2008, p. 2). Land conversion to residential or commercial projects is likely to occur in the near future because the Municipality of Toa Baja (as part of its land use plans) intends to zone the habitat, an area formerly part of the Sabana Seca Navy Base, for residential development. This species has not been found in any other location. The species' limited range and apparent habitat requirements may be a factor affecting the species' continued existence.

The petitioner also asserted that the species is threatened by other reasons related to its low reproductive capacity, highly specialized ecological requirements, brush fires, use of herbicides and changing climate conditions. Although the petition reports an abundance of 450 individuals/ha (181 individuals/ac) (Caribbean Primate Research Center 2007, p. 3; Caribbean Primate Research Center 2008, p.5), it identified low reproductive capacity as a threat to the species. Rios-López and Thomas (2007, p. 60) found that egg clutches generally contain 1 to 5 eggs, based on data collected from 24 egg clutches. Rios-López and Thomas (2007, p. 63) indicated that recent surveys conducted in nearby wetlands failed to locate the species and that apparently, there are few or no wetlands with plant composition similar to that found in the Sabana-Seca type locality.

No additional information was provided regarding how many wetlands have been surveyed for determining presence or absence of the species nor what type of studies have been conducted to compare habitat characteristics among these wetlands. However, the evidence presented in the petition and in the scientific literature suggest that the species is an obligate marsh-dweller (Rios-López 2007, p. 62) and has only been found in the Sabana Seca-Ingenio Ward. Also, the petition mentions that brush fire increases the species risk of extinction by reducing the cover of the wetland. The amended petition mentioned that the current use of herbicides in the former base, as part of the maintenance work on the grounds, represents a current threat to the species. Additionally, the amended petition identified changing climatic conditions as a possible threat to the wetland where the coqui llanero is currently present. However, no further information was provided supporting these threats.

To summarize, the primary natural or manmade threats appear to be the limited distribution, low reproductive capacity, highly specialized ecological requirements, and potential threats such as the use of herbicides and fires to the species' habitat. Based on the information presented in the petition and available in our files, we find that the petition presents substantial information to indicate that other natural or manmade factors may be affecting the continued existence of the coqui llanero. Therefore, we find that the petition presents substantial information for this factor.

Finding

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our process for making this 90-day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition presents ''substantial scientific and commercial information,'' which is interpreted in our regulations as ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). As described in our five-factor analysis above, the petition presents substantial information indicating that listing the coqui llanero as threatened or endangered throughout its entire range may be warranted based on Factors A, D, and E. We reviewed the petition, supporting information provided by the petitioner, and information in our files, and we evaluated that information to determine whether the sources cited support the claims made in the petition.

The petition and supporting information identified numerous factors affecting the species, including residential development, lack of regulatory mechanisms protecting the species and its habitat, and the limited habitat suitability available to the species. Our conclusion is based on information that indicates that the species' continued existence may be affected by loss and fragmentation of habitat from land conversion, development, and habitat contamination (Factor A); inadequate protection from threats by regulatory mechanisms (Factor D); and other natural or manmade factors such as limited habitat and range, low reproductive capacity, highly specialized ecological requirements, and use of herbicides and fires (Factor E). The petition did not contain information indicating that Factors B and C are considered a threat to this species. As a result of this finding, we are initiating a status review of the species. At the conclusion of the status review, we will issue a 12-month finding, in accordance with section 4(b)(3)(B) of the Act, as to whether or not we believe a proposal to list the species is warranted.

The ''substantial information'' standard for a 90-day finding is not the same as the Act's ''best scientific and commercial data'' standard that applies to a 12-month finding to determine whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination of whether a petitioned action is warranted is not made until we have completed a thorough status review of the species as part of the 12-month finding on a petition, which is conducted following a positive 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a positive 90-day finding does not mean that the 12-month finding also will be positive.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Caribbean Ecological Services Field Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are the staff members of the Caribbean Ecological Services Field Office.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 26, 2009.

Marvin E. Moriarty,

Acting Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. E9–16065 Filed 7–7–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R6-ES-2009-0025; MO 922105 0083 – B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Susan's purse-making caddisfly (*Ochrotrichia susanae*) as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90–day finding on a petition to list the Susan's purse-making caddisfly (*Ochrotrichia susanae*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing the Susan's purse-making caddisfly may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the species to determine if listing the species is warranted. To ensure that the review is comprehensive, we are soliciting scientific and commercial data and other information regarding this species.

DATES: We made the finding announced in this document on July 8, 2009. To allow us adequate time to conduct this review, we request that we receive data and information on or before September 8, 2009.

ADDRESSES: You may submit information by one of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Search for docket FWS-R6-ES-2009-0025 and follow the instructions for submitting comments.

• *U.S. mail or hand-delivery*: Public Comments Processing, Attn: FWS-R6-ES-2009-0025; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Information Solicited section below for more details).

FOR FURTHER INFORMATION CONTACT: Patricia S. Gelatt, Western Colorado Supervisor, Western Colorado Field Office, 764 Horizon Drive, Building B, Grand Junction, CO 81506-3946, by telephone (970-243-2778, extension 29), or by facsimile (970-245-6933). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information concerning the status of the Susan's purse-making caddisfly. We request information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the Susan's purse-making caddisfly. We are seeking information regarding:

(1) The historical and current status and distribution of the Susan's purse-making caddisfly, its biology and ecology, and ongoing conservation measures for the species and its habitat; and

(2) Information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence and threats to the species or its habitat.

If we determine that listing the Susan's purse-making caddisfly is warranted, it is our intent to propose critical habitat to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, with regard to areas within the geographical range currently occupied by the Susan's purse-making caddisfly, we also request data and information on what may constitute physical or biological features essential to the conservation of the species, where these features are currently found, and whether any of these features may require special management considerations or protection. In addition, we request data and information regarding whether there are areas outside the geographical area occupied by the species that are essential to the conservation of the species. Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of the Act.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.'' Based on the status review, we will issue a 12–month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on *http://www.regulations.gov*, or by appointment during normal business hours, at the U.S. Fish and Wildlife Service, Western Colorado Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act, requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on

information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90–day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly commence a status review of the species.

On July 8, 2008, we received a petition via e-mail from the Xerces Society for Invertebrate Conservation, Dr. Boris C. Kondratieff (Colorado State University), Western Watersheds Project, WildEarth Guardians, and Center for Native Ecosystems requesting that the Susan's purse-making caddisfly be listed as endangered under the Act and critical habitat be designated. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required by 50 CFR 424.14(a). In an August 5, 2008, letter to the petitioners, we responded that we had reviewed the petition and determined that an emergency listing was not necessary. We also stated that due to court orders and settlement agreements for other listing and critical habitat actions, all of our fiscal year 2008 listing funds had been allocated and that further work on the petition would not take place until fiscal year 2009.

Species Information

The Susan's purse-making caddisfly is a small, hairy, brown caddisfly in the family Hydroptilidae. Adult forewings are 2 millimeters (mm) (0.08 inch (in.)) in length and are dark brown with three transverse silver bands, one each at the wing base, the wing midline, and the wing apex (Flint and Herrmann 1976, p. 894).

The larvae of Hydroptilidae are unusual among the case-making families of Trichoptera in that they are free-living until the final (fifth) larval instar (developmental stage between molts) (Wiggins 1996, p. 72). When the larvae molt to the fifth instar, they develop enlarged abdomens, build purse-shaped cases from silk and sand, and become less active (Wiggins 1996, p. 71). They construct a case which can be portable or cemented to the substrate (Wiggins 1996, p. 71). Larvae in this family are very small but can reach up to 6 mm (0.3 in.) (Wiggins 1996, p. 71). The head and the dorsal surface (top) of all three thoracic segments are dark brown and sclerotized (hardened) (Flint and Herrmann 1976, p. 894). Larval cases are small, flattened, bivalved, and open at each end, similar to other members of the genus *Ochrotrichia*. However, the Susan's purse-making caddisfly larval cases are slightly shorter proportionally and are made from smaller grains of sand (Flint and Herrmann 1976, p. 894). The larvae eventually pupate within the case.

Feeding behavior of the Susan's purse-making caddisfly larvae has not been observed directly, but larvae in this genus generally feed by scraping diatoms from rocks (Wiggins 1996, p. 96). Where the species has been collected, rocks that were thickly covered with larval cases were also associated with heavy growths of filamentous algae and moss (Flint and Herrmann 1976, p. 897).

Adult Trichoptera have reduced mouthparts and lack mandibles, but can ingest liquids. The adult flight period was estimated to be from late June to early August by Flint and Herrmann (1976, p. 897), although adults were collected from mid-April to late July in a later survey (Herrmann *et al.* 1986, p. 433). The Susan's purse-making caddisfly is thought to produce one generation per year (Flint and Herrmann 1976, p. 897).

Taxonomy

The Susan's purse-making caddisfly was first described by Flint and Herrmann (1976, pp. 894-898) from specimens taken in 1974 at Trout Creek in Chaffee County, Colorado. The genus *Ochrotrichia* is widespread and fairly diverse in North America, with over 50 described species (Wiggins 1996, p. 96). Adults can be distinguished from other species in the genus *Ochrotrichia* based on characteristics of the genitalia.

Historic and Current Distribution

From 1974 to 1994, the Susan's purse-making caddisfly was only known to exist at and below Trout Creek Spring on U.S. Forest Service (USFS) land in Chaffee County, Colorado. Larvae, pupae, and adults were collected at the spring outfall area and as far downstream in Trout Creek as ~130 meters (m) (430 feet (ft)). Trout Creek Spring is at an elevation of about 2,750 m (9,020 ft). A review of specimens collected in Colorado prior to 1987 determined that the Susan's purse-making caddisfly was still found only in the type locality (location type where first found) (Herrmann *et al.* 1986, p. 433).

In 1995, specimens were collected at a new site, High Creek Fen in Park County, Colorado, about 27 air kilometers (17 air miles) north of the type locality (Durfee and Polonsky 1995, pp. 1, 5, 7). High Creek Fen is a unique groundwater-fed wetland with high ecological diversity; it is considered a rare type of habitat and the southernmost example of this type of ecosystem in North America (Cooper 1996 pp. 1801, 1808; Rocchio 2005, p. 10; Legg 2007, p. 1). High Creek Fen is primarily owned by The Nature Conservancy TNC) and the Colorado State Land Board, as well as private landowners.

Status

The Susan's purse-making caddisfly has a Global Heritage Status Rank of G2, a National Status Rank of N2, and a Colorado State Rank of S2 (NatureServe 2008, pp. 1-4). NatureServe defines the G2 rank as signifying that a species is imperiled (at a high risk of extinction) globally due to a very restricted range, very few populations, steep population declines, or other factors. The N2 and S2 ranks are assigned based upon the same factors, and species in these categories are defined as vulnerable to extirpation nationally or within a state or province. In the case of the Susan's purse-making caddisfly, if it is extirpated in Colorado, it will mean the species is extinct. No population estimates exist for the Susan's purse-making caddisfly, but it is only known to occur at Trout Creek Spring and High Creek Fen.

Habitat Requirements

Physical and chemical conditions of the type locality spring were assessed when the Susan's purse-making caddisfly was first collected and described (Flint and Herrmann 1976, pp. 894-897). The results suggested that this species has a relatively narrow set of ecological requirements. Water temperatures in the spring habitat were cold and varied little (14.4 to 15.8 °Celsius (°C)) (57.9 to 60.4 °Farenheit (°F)). Stream conditions included extremely high levels of dissolved oxygen (at or near 100 percent saturation), as well as high concentrations of dissolved calcium (Ca), magnesium (Mg), and sulfate (SO_4), which gave the water a higher electrical conductance value than typically seen in most regional streams at the same elevation. It is unknown at this time if this is significant to the species. Overall, larvae appear to inhabit waters in small streams that are cold, well-oxygenated,

highly buffered, and low in trace metals. Larvae and pupae were collected primarily from the sides of rocks in both the spring outfall and the downstream locations, especially in areas directly below small waterfalls in the creek, and were often clustered in clumps that covered the rocks (Flint and Herrmann 1976, pp. 894-897). High Creek Fen appears to have similar water quality as Trout Creek Spring (Durfee and Polonsky 1995, p. 5; Cooper 1996, pp. 801, 803).

Five-Factor Evaluation

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species or subspecies may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In making this 90–day finding, we evaluated whether information regarding the Susan's purse-making caddisfly as presented in the petition is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below. We did not have any information on this species prior to receiving the petition. Most, but not all, references cited in the petition were provided to us by the petitioners. We were able to locate most of the additional references cited in the petition that were not included with the petition.

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The petitioners state that the primary threats to the survival of the Susan's purse-making caddisfly are impairment and destruction of their restricted habitat due to livestock grazing and logging-related activities. They also point out potential threats to the Susan's purse-making caddisfly by dewatering of its habitat, road sedimentation, and recreation, including hiking, camping, and off-road vehicle (ORV) use.

Livestock Grazing

The petitioners believe that the Trout Creek Spring area is being impacted by grazing and will continue to be impacted by livestock grazing around and upstream of the spring area. The USFS 2007 Draft Environmental Assessment for the Rangeland Allotment Management Planning on the Salida-Leadville-South Park Planning Area (Draft Grazing EA) was cited by the petitioners as documentation for grazing impacts. The petitioners believe the spring and section of Trout Creek occupied by the Susan's purse-making caddisfly are in the Chubb Allotment, but maps in the Draft Grazing EA are unclear. In addition, the spring and occupied section of Trout Creek may be in the Four-mile Allotment. When we conduct a 12–month finding on the Susan's purse-making caddisfly, we will obtain accurate location information from the USFS. If the Susan's purse-making caddisfly is in the Four-mile Allotment, activities within either the Chubb or Four-mile allotment could have impacts on the caddisfly and its habitat through vegetation removal or through erosion and contribution of sediment to the stream. If the Susan's purse-making caddisfly and its habitat are only in the Chubb Allotment, only activities in the Chubb Allotment will affect the caddisfly, since it is upstream of the Four-mile Allotment.

The petitioners cite references stating that livestock grazing creates greater erosion potential due to removal of riparian and upland vegetation, removal of soil litter, increased soil compaction via trampling, and increased area of bare ground (Schultz and Leininger 1990, pp. 297-298; Fleischner 1994, pp. 631-636). The Draft Grazing EA states that upland bench and transition areas on State-owned lands in the Chubb Allotment have higher than expected bare ground with some nonnative plant species and some willow die-back in the riparian zone, possibly due to drought (USFS 2007a, p. 10). The petition states that most of the accessible forage in the Chubb Allotment is in riparian areas. The petitioners also cite references that negative effects of livestock grazing can frequently be magnified in riparian ecosystems, as cattle tend to congregate in these areas for the abundant forage, shade, and water (Roath and Krueger 1982, pp. 101-102; Gillen *et al.* 1984, pp. 551-552; Chaney *et al.* 1993, pp. 6, 15).

The Draft Grazing EA states that in grassland areas within the Four-mile Allotment there is evidence of drought throughout the allotment and high incidence of bare ground (USFS 2007a, p. 11). However, the riparian area in the Four-mile Allotment appears to be in good shape with the exception of cottonwood regeneration (USFS 2007a, p. 11).

The petitioners believe that continued grazing will likely increase the severity of these identified problems. Bare, compacted soils allow less water infiltration, which generates more surface runoff and can contribute to erosion as well as flooding and stream bank alterations (Abdel-Magid *et al.* 1987, pp. 304-305; Orodho *et al.* 1990, pp. 9-11; Chaney *et al.* 1993, pp. 8-15). Increased erosion leads to higher sediment loads in nearby waters, degrading habitat and increasing water turbidity. The petitioners believe these problems will be exacerbated by removal of riparian vegetation by livestock, as a riparian buffer helps filter overland runoff, slow flooding, and stabilize stream banks. The petition states that areas of bare ground also can facilitate the colonization and spread of invasive species, further reducing riparian vegetation quality. Seeds and propagules of such weeds and noxious species can be introduced by livestock via their fur, hooves, or dung. The petitioners believe that livestock grazing in and upstream of the area around the type of springs utilized by the Susan's purse-making caddisfly has the potential to result in habitat degradation and destruction due to the impacts stated above.

The petitioners believe that the combined impacts of vegetation loss, soil compaction, stream bank destabilization, and increased sedimentation associated with intensive livestock grazing can have a profound effect on aquatic macroinvertebrates. The petition cites a 4–year study, conducted in a mountain stream in northeastern Oregon, which found a dramatic decline in macroinvertebrate abundance and species richness for some taxa, including caddisflies, on grazed versus ungrazed sites (McIver and McInnis 2007, pp. 293, 300-301). The petition also states that a variety of aquatic macroinvertebrate community attributes relating to taxa diversity, community balance, trophic status, and pollution tolerance were strongly negatively impacted by moderate or heavy grazing in small mountain streams in Virginia, compared to lightly grazed or ungrazed control areas (Braccia and Voshell 2007, pp. 196-198).

The petitioners believe that the habitat around Trout Creek Spring is currently subject to reduced riparian vegetation and that continued grazing around Trout Creek Spring will further remove riparian vegetation, reducing the shading canopy and leading to rising water temperatures and lower dissolved oxygen levels. The Susan's purse-

making caddisfly requires cold, fast-running, well-oxygenated water (Flint and Herrmann 1976, p. 897), and the petitioners believe the species is likely to be negatively impacted by decreased riparian vegetation, stream bank destabilization, and increases in water temperature brought on by grazing.

Hazardous Fuel Reduction Activities

The petitioners state that the Trout Creek area may be impacted by a logging and hazardous fuel reduction project called the North Trout Creek Forest Health and Hazardous Fuel Reduction Project (Fuel Reduction Project), which will treat approximately 3,500 hectares (ha) (8,700 acres (ac)) with salvage logging, thinning, and prescribed fire to reduce hazardous fuel loads. The North Trout Creek Forest Health and Hazardous Fuel Reduction Final Economic Analysis (Fuel Reduction EA) for the project is dated February 2007 (USFS 2007b, pp. 1-143 + maps), with a Decision Notice and Finding of No Significant Impact signed on April 3, 2007 (USFS 2007c, pp. 1-25). The Salida Ranger district has also recently instituted a new Federal Business Opportunity (FBO) program adjacent to the North Trout Creek project area called Ranch of the Rockies (USFS 2007d, pp. 1-3), which involves 35 ha (86 ac) in the Trout Creek Pass area. This timber sale project involves skidding and yarding live and dead trees and piling the resulting slash. The petitioners state that roads and prescribed fire related to logging and hazardous fuels reduction can impact the Susan's purse-making caddisfly.

The Fuel Reduction EA states that upland areas on bench and transition areas in the Chubb Allotment have localized areas of bare ground with some nonnative plant species and some willow die-back in the riparian zone, possibly due to drought (USFS 2007b, p. 35). The Fuel Reduction EA states that in grassland and in bench and transition areas within the Four-mile Allotment, evidence of drought occurs throughout the allotment and a high incidence of bare ground with invading nonnative plants occurs. The Fuel Reduction EA also states that the riparian area in the Four-mile Allotment appears to be in good shape with the exception of cottonwood regeneration (USFS 2007b, p. 36).

Logging Roads

The petitioners cite Cederholm *et al.* (1980, p. 25), who state that disturbance associated with logging road construction and operation is a significant source of sediment load in streams. Similar to the effects of livestock grazing on aquatic habitats, roads remove vegetation, compact soil (reducing water infiltration), increase erosion and sedimentation, increase the amount and pattern of surface runoff, introduce contaminants, and facilitate the spread of invasive plant species (Anderson 1996, pp. 1-13; Forman and Alexander 1998, pp. 210, 216-221; Jones *et al.* 2000, pp. 77-82; Trombulak and Frissell 2000, pp. 19, 24; Gucinski *et al.* 2001, pp. 12-15, 22-32, 40-42; Angermeier *et al.* 2004, pp. 19-24). The cumulative effects on streams include increases in siltation, increases in nonpoint source pollution, increases in water temperatures, and decreases in dissolved oxygen levels.

The petition states that unpaved roads are a primary source of sediment in forested watersheds (Sugden and Woods 2007, p. 193). The Fuel Reduction EA does not propose to create new permanent roads, but would allow creation of about 10 kilometers (km) (6 miles (mi)) of new temporary roads and reopen 16 km (10 mi) of existing closed roads (USFS 2007b, p. 83). The sediment yield from construction of temporary roads and reopening of closed roads associated with the Fuel Reduction Project is estimated to be 41.2 tons/year, with 9.3 times greater sediment load in the Trout Creek watershed predicted from the action versus no action alternatives (USFS 2007b, p. 83). The petition states that even the use of temporary roads can have a long-term effect on soil compaction, as studies conducted in California indicated that soil in logging skid trails that had not been used in 40 years remained 20 percent more compacted than soil in nearby areas that were not used as skid trails (Vora 1988, pp. 117, 119).

Prescribed Fire

The petition states that, in addition to logging activities, the Fuel Reduction Project involves prescribed burns (USFS 2007b, map 2.3), and the Ranch of the Rockies timber sale project (USFS 2007d, pp. 1-3) involves burning piles of slash. The petition states that regular burns conducted around the area of Trout Creek Spring could have a negative impact on stream quality, because burning has been shown to affect aquatic habitats and watersheds in a variety of ways (Neary *et al.* 2005, pp. 1-250). For instance, mechanical site preparation and road construction needed to conduct prescribed burns can lead to increased erosion and sediment production, especially on steep terrain. Removal of leaf litter from the soil surface through burning can lead to reduced water infiltration into the soil, increasing the amount of surface runoff into streams. Additionally, ash depositions following a fire can affect the pH of water. Negative impacts may be exacerbated by burning slash piles, since the fire intensity is greater when the fuel is piled in a small area which can have a stronger impact on the underlying soil.

The petitioners believe that cumulative effects of increased erosion, increased sedimentation, and nonpoint source pollution from prescribed fire associated with logging activities in the area near the Susan's purse-making caddisfly habitat are likely to have a serious deleterious effect on this species. However, the petitioners provide no information to quantify the magnitude of potential cumulative effects from these activities.

Dewatering of Spring Habitats

The petition states that Trout Creek Spring is not currently proposed for livestock water development, but several other water developments exist and are being pursued in the Chubb Park area. The petitioners believe the development of numerous springs in the area could affect the hydrology of remaining springs and streams, in addition to reducing potential new habitat for the Susan's purse-making caddisfly colonization. The petition states that reduction of stream flow due to increased groundwater use and water diversion can have a dramatic impact on stream habitat and associated macroinvertebrate communities. The petition states that a range of studies examined in a review of the subject by Dewson *et al.* (2007, pp. 401-411) indicated that artificial flow reductions frequently lead to changes such as decreased water depth and increased sedimentation, as well as altered water temperature and water chemistry, thereby reducing or influencing macroinvertebrate numbers, richness, competition, predation, and other interactions. The petitioners believe the restricted distribution and narrow habitat requirements of the Susan's purse-making caddisfly make it likely that human-induced alterations in stream hydrology and water chemistry will have a negative impact on this species.

High Creek Fen, where the second known population of the Susan's purse-making caddisfly exists, is part of a 485-ha (1,200-ac) preserve owned and managed by TNC. The petition states that Park County, where the preserve is located, has experienced significant population increases since the 1990s, and is currently considered one of the fastest-growing counties in Colorado

(Miller and Ortiz 2007, p. 2). Population growth in this area is accompanied by an increased demand for fresh drinking water. In 2000, 89 percent of the population of Park County received water from groundwater sources (Miller and Ortiz 2007, p. 2). The area surrounding High Creek Fen is currently being protected, but the fen itself is fed by groundwater sources. The petitioners believe sustained or increasing groundwater removal to support increased human development is likely to have a deleterious effect on the hydrology of this vulnerable habitat and the unique plant and invertebrate species it supports, including the Susan's purse-making caddisfly. However, the petitioners provide no information to quantify the magnitude or temporal aspect of potential effects from this activity.

Roads

In addition to roads associated with timber-related projects as described above, the petition states that the springs utilized by the Susan's purse-making caddisfly are impacted by Highway 285 and Forest Road 309 (USFS 2007b, map 2.3).

Highway 285, which receives heavy traffic, runs within a few hundred meters (several hundred feet) of Trout Creek Spring. The petition states that roads accumulate a variety of contaminants including brake dust, heavy metals, and organic pollutants, which are carried directly into streams by overland runoff (Forman and Alexander 1998, pp. 219-221; Trombulak and Frissell 2000, pp. 19, 22-24; Gucinski *et al.* 2001, pp. 40-42). Forest Road 309, which is immediately above the spring, receives periodic maintenance, including grading, which, the petition states, can increase the rate of erosion and deliver increased silt loads to the type locality spring and stream (Gucinski *et al.* 2001, pp. 12-15).

Recreation

The petition states that population growth in and around the project area has led to increased numbers of recreational users. The pressure of recreational users is likely to remain high, because the population growth this area has experienced in recent years is expected to continue. The population of Chaffee County increased 28.1 percent from 1990 to 2000, with much of the growth occurring in unincorporated areas, and the population of Colorado is expected to increase by about 50 percent within the next 20 to 25 years (Chaffee County Comprehensive Plan 2000, p. 10).

Camping and Hiking

The petition states that the Chubb Park area is a popular site for outdoor enthusiasts, and is a year-round destination for hunting, mountain biking, scenic drives, bird watching, hiking, and camping. Population increases in the region also have increased the numbers of regular local users, and recreational use is likely to continue to intensify, based on national trends. A study of outdoor recreation trends in the United States (Cordell *et al.* 1999, pp. 219-321) found increases in participation in most of the activities surveyed, which included bicycling, primitive or developed area camping, birdwatching, hiking, backpacking, and snowmobiling.

The petitioners believe intensified human activities in and around natural areas will have unavoidable negative impacts on habitat. For example, the petitioners state that unauthorized trails have been created by hikers along streams in the area around Trout Creek Spring. In addition, hikers may intentionally or through negligence leave gates open that are intended to restrict livestock from riparian areas or from grazed pastures that are being rested. Direct damage to Trout Creek Spring is possible, as it is a desirable water source for campers (USFS 2007e, p. 2). The petition states that increased human passage to the spring to obtain water could damage the riparian zone and disturb habitat. In addition, if campers use the spring to wash themselves or their cookware, the water quality of the spring could be negatively impacted by detergents. The petitioners believe that the activities of large numbers of recreational users could damage the integrity of the habitat of the Susan's purse-making caddisfly through trampling and removal of riparian vegetation, compacting soil, creating ruts and bare ground across portions of upland and riparian zones, and lowering water quality.

Off-Road Vehicle Use in Non-designated Areas

The petition states that unauthorized off-road vehicle (ORV) and motorcycle usage and impacts have been documented in the Trout Creek watershed and around the Trout Creek Spring type locality (Teves and Stednick 2005, pp. 14, 19; USFS 2007e, pp. 2-3). The petition states that on the national level, ORV usage has risen substantially; the number of people who reported engaging in ORV activities rose by 8 million individuals between 1982 and 1995, and an increase of 16 percent nationally is anticipated during the next 50 years (Bowker *et al.* 1999, pp. 339-340; Garber-Yonts 2005, p. 30). ORV use in the Trout Creek watershed is extensive, and as much as 80 percent of the trails in some areas have been created illegally (Teves and Stednick 2005, p. 14). The petitioners believe illegal ORV use can negatively impact conditions in riparian areas through damage to riparian vegetation and stream banks, leading to increased sedimentation.

Evaluation of Information Provided in the Petition

We reviewed the petition, the references included with the petition, and the references cited by the petitioners that we were able to locate. The petition documents that grazing occurs upstream and immediately around Trout Creek Spring, and presents information that demonstrates that grazing is currently having deleterious effects on the Susan's purse-making caddisfly habitat and vegetation surrounding the stream and wetland areas where the caddisfly occurs. The Draft Grazing EA states that the Chubb Allotment has livestock concentrating in low lying areas, infrastructure is not adequate to control livestock, hoof action is causing bank trampling and plant pedestalling in the riparian area, and there is a need to maintain or improve the riparian area (USFS 2007a, p. 22). For the Four-mile Allotment, the Draft Grazing EA states that infrastructure is not adequate to control livestock, and there is a need to maintain or improve riparian areas (USFS 2007a, p. 22). Furthermore, the USFS Sensitive Species designation for the Susan's purse-making caddisfly points out that grazing cannot be discounted as a threat (USFS 2007e, p. 2).

Effects from large-scale or intense burns, and from the construction of new logging roads, may be occurring. According to a map in the Fuel Reduction EA (USFS 2007b, map 2.3), no prescribed burns will occur immediately around or upstream of Trout Creek Spring, but burns higher up in the watershed, in the Chubb Park area, could add sediment from the burning and thinning activities. The Fuel Reduction EA states that 9.3 times greater sediment load in the Trout Creek watershed is expected from the action alternative relative to the no action alternative (USFS 2007b, p. 83). We could find no evidence that the Ranch of the Rockies timber sale (USFS 2007d, pp. 1-3) would involve burning. Nonetheless, the creation of temporary roads and skid trails in the Ranch of the Rockies timber sale area could further

increase sedimentation. The Fuel Reduction EA did not contain a description of the timeline for the prescribed burns or thin and burn projects, other than a statement that treatments would occur at various intervals (USFS 2007b, p. 55). If burns and thinning treatments are placed too closely together in either time or space, we believe increased impacts from sedimentation could occur.

Although the Draft Grazing EA does not contain concrete statements that further water development will occur for grazing purposes, water development for grazing purposes is listed as an option in several places both on Chubb and Four-mile allotments and as a standard practice throughout the planning area (USFS 2007a, pp. 47, 50, 54). The Draft Grazing EA states that no stock water is available in uplands to draw cattle away from low lying areas within the Chubb Allotment (USFS 2007a, p. 22). Similarly, the Draft Grazing EA states that limited stock water is available in uplands to draw cattle away from low lying areas within the Four-mile Allotment (USFS 2007a, p. 22). Furthermore, surface water or groundwater depletions farther upstream in the High Creek watershed could impact the Susan's purse-making caddisfly at High Creek Fen. We find that there is only speculative information provided in the petition regarding future water development in either area.

Trout Creek Spring is located in a very narrow corridor between Highway 285 and Forest Road 309. As documented in some studies (Forman and Alexander 1998, pp. 219-221; Trombulak and Frissell 2000, pp 19, 22-24; Gucinski *et al.* 2001, pp. 12-15, 40-42) and mentioned in the Fuel Reduction EA (USFS 2007b, p. 83), it is likely that erosion and increased sediment load will occur as a result of maintenance and use of the roads. Contaminant impacts from road salts and vehicles could occur, but the petition provided little information on these particular impacts.

According to the USFS Sensitive Species designation, ORV use has been documented to impact the habitat around Trout Creek Spring (USFS 2007e, pp. 2-3). The Sensitive Species designation also states that dispersed recreation could be an impact, but this appears to be less certain. Portions of the Four-mile Allotment apparently have high recreational use (USFS 2007a, p. 22) but it is not clear if high recreational use occurs around Trout Creek Spring. The petition did not indicate that recreational use at High Creek Fen was a threat.

Overall, we find that the petition presents substantial information indicating that listing the Susan's purse-making caddisfly may be warranted based on the present or threatened destruction, modification, or curtailment of the species' habitat or range through impacts of livestock grazing, erosion and sedimentation from logging roads, and sedimentation from prescribed fire activities. We find that the petition does not present substantial information indicating that listing the Susan's purse-making caddisfly may be warranted based on impacts from dewatering of spring habitats; contaminant runoff from existing roads; erosion and sediment impacts from existing roads; or recreational impacts from ORV use, camping, or hiking at either Trout Creek or High Creek Fen.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petitioners believe that because this species is so rare, collection is a potential threat. The petitioners state that, in general, because of the high fecundity of insects, the collection of insects typically poses little threat to their populations. However, in the case of the Susan's purse-making caddisfly, where it is restricted to only two small sites, the petitioners believe that collection of individuals for scientific or educational purposes could significantly reduce production of offspring and affect the species.

Evaluation of Information Provided in the Petition

The Susan's purse-making caddisfly occupies only two small sites, so overutilization could easily occur if people wanted to collect the caddisfly. However, the petitioners provided no evidence that overutilization has been or will be a threat to the Susan's purse-making caddisfly. Consequently, the petition does not provide substantial information indicating that listing the Susan's purse-making caddisfly may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes.

C. Disease or Predation

The petitioners state that neither disease nor predation appear to be a threat to the Susan's purse-making caddisfly. However, they state that little is known about the life history and ecology of the Susan's purse-making caddisfly, and threats from disease or predation have never been assessed. They also state that small size of the only two known populations of the Susan's purse-making caddisfly makes this species more vulnerable to extinction as a result of normal population fluctuations due to predation or disease.

Evaluation of Information Provided in the Petition

The Susan's purse-making caddisfly may be more vulnerable to extinction from disease or predation as a result of its small population size. However, the petitioners present no evidence of current disease or predation problems, nor do they provide information to link this to a potential problem in the future. Consequently, the petition does not provide substantial information indicating that listing the Susan's purse-making caddisfly may be warranted due to disease or predation.

D. Inadequacy of Existing Regulatory Mechanisms

The petitioners state that the Susan's purse-making caddisfly receives no Federal or State protection. It is listed as USFS Region 2 sensitive species (USFS 2007e, pp. 1-3), but the petitioners state that potential impacts to the Susan's purse-making caddisfly from the Fuels Reduction Project (USFS 2007b, p. 48), grazing management through the Draft Grazing EA (USFS 2007a, p. 108), and the Ranch of the Rockies timber sale project (USFS 2007d, pp. 1-3) were not addressed. The petitioners believe that multiple, ongoing grazing and fuel reduction projects in and around the areas where the Susan's purse-making caddisfly is found will continue to impair existing and potential spring habitat for this restricted species.

Evaluation of Information Provided in the Petition

We reviewed portions of the Fuel Reduction EA (USFS 2007b, p. 48) and found that the Susan's purse-making caddisfly was not addressed. We also reviewed portions of the Draft Grazing EA and found that the Susan's purse-making caddisfly was not mentioned (USFS 2007a, p. 108). As the Sensitive Species designation points out (USFS 2007e, p. 2), grazing cannot be discounted as a threat. Consequently, if the USFS is not addressing grazing or other impacts immediately around Trout Creek Spring and Trout Creek, or giving greater consideration to actions upstream affecting water quality and quantity, we do not believe that sensitive species designation constitutes an adequate regulatory mechanism to protect the species and its habitat. TNC and Colorado State Land Board own a majority of the land around High Creek Fen, which helps to protect the fen. However, the petitioners did not

provide specific land protection information regarding measures that either of these entities may be taking to protect the fen.

Due to lack of evidence of apparent Federal protection, we conclude that the petition presents substantial information indicating that listing the Susan's purse-making caddisfly may be warranted based on inadequate existing regulatory mechanisms. The petition did not provide any information regarding State or non-governmental regulatory mechanisms, nor do we have any information in our files.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Small Population Size and Stochastic Events

The petitioners state that small populations are generally at greater risk of extirpation from normal population fluctuations due to predation, disease, and changing food supply, as well as from natural disasters such as floods or droughts. They also state that loss of genetic variability and reduced fitness due to inbreeding may be occurring due to limited dispersal ability of the Susan's purse-making caddisfly between the two known populations.

Global Climate Change

The petitioners state that the effects of global climate change are being assessed in North America and throughout the world, and changes in precipitation patterns, stream hydrology, and bloom time have already been noted. They state that stream flows decreased by about 2 percent per decade across the last century in the central Rocky Mountain region (Rood *et al.* 2005, p. 231).

The petitioners also reference Field *et al.*'s (2007, p. 627, 632, 635) conclusions that the effects of global climate change are anticipated to include warming in the western mountains, causing snowpack and ice to melt earlier in the season. These changes could lead to both increased flooding early in the spring, and drier summer conditions, particularly in the arid western areas which rely on snowmelt to sustain stream flows. The petitioners point out that spring and summer snow cover has already been documented as decreasing in the western United States, and drought has become more frequent and intense (Intergovernmental Panel on Climate Change 2007, pp. 8, 12). Major hydrologic events such as floods and droughts are projected to increase in frequency and intensity (Intergovernmental Panel on Climate Change 2007, p. 18). The petitioners state that erosion is also projected to increase as the result of a combination of factors, such as decreased soil stability from higher temperatures and reduced soil moisture, and increases in winds and high intensity storms (Intergovernmental Panel on Climate Change 2007, pp. 12, 14, 15, 18).

The petitioners conclude that projected cumulative effects of continuing global climate change, including increased frequency and severity of seasonal flooding and droughts, reduced snowpack to feed stream flow, increased siltation, and increasing air and water temperatures, would seriously impair the Susan's purse-making caddisfly's habitat and negatively impact its survival.

Evaluation of Information Provided in the Petition

Although the limited distribution and presumably small size of the two populations of the Susan's purse-making caddisfly could be a concern, the petitioners did not provide trend information to indicate that the caddisfly or its habitat are being impacted as a result of small population size or stochastic events. It is possible that climate change could pose a problem to the Susan's purse-making caddisfly if water levels, water temperature, or other habitat variables that affect the caddisfly change as a result global warming. However, there is currently no model that can predict climate change effects at a local enough scale to ascertain whether climate change is, or will become, a threat to the Susan's purse-making caddisfly. Consequently, we conclude that the petition does not present substantial information indicating that listing the Susan's purse-making caddisfly may be warranted based on other natural or manmade factors affecting the species' continued existence.

Finding

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our process for making this 90–day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition presents ''substantial scientific and commercial information,'' which is interpreted in our regulations as ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). As described above, the petition presents substantial information indicating that listing the Susan's purse-making caddisfly throughout its entire range may be warranted, based on impacts of livestock grazing, erosion and sedimentation from logging roads, and sedimentation from prescribed fire activities (Factor A), and the inadequacy of Federal regulatory mechanisms (Factor D). Based on our evaluation (above), the petition does not present substantial information indicating that Factors B, C, and E are a threat to this species. However, we are seeking information from the public that may be relevant to these and the other listing factors.

Based on this review and evaluation, we find that the petition presents substantial scientific or commercial information that listing the Susan's purse-making caddisfly throughout all or a portion of its range may be warranted due to current and future threats under Factors A and D. Therefore, we are initiating a status review to determine whether listing the Susan's purse-making caddisfly under the Act is warranted.

The ''substantial information'' standard for a 90–day finding is not the same as the Act's ''best scientific and commercial data'' standard that applies to a 12–month finding to determine whether a petitioned action is warranted. A 90–day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination of whether a petitioned action is warranted is not made until we have completed a thorough status review of the species as part of the 12–month finding on a petition, which is conducted following a positive 90–day finding. Because the Act's standards for 90–day and 12–month findings are different, as described above, a positive 90–day finding does not mean that the 12–month finding also will be positive.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Western Colorado Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are the staff members of the Western Colorado Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 25, 2009.

Marvin E. Moriarty,

Acting Director, U.S. Fish and Wildlife Service

[FR Doc. E9–16080 Filed 7–7– 09; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 090130102–91070–01]

RIN 0648–AX59

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Bigeye Tuna Catch Limits in Longline Fisheries in 2009, 2010, and 2011

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to establish a catch limit for bigeye tuna (*Thunnus obesus*) in the U.S. pelagic longline fisheries in the western and central Pacific Ocean for each of the years 2009, 2010, and 2011. Once the limit of 3,763 metric tons (mt) is reached in any of those years, retaining, transshipping, or landing bigeye tuna caught in the western and central Pacific Ocean would be prohibited for the remainder of the year, with certain exceptions. The limit would not apply to the longline fisheries of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands (CNMI). This action is necessary for the United States to satisfy its international obligations under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), to which it is a Contracting Party.

DATES: Comments must be submitted in writing by August 7, 2009.

ADDRESSES: You may submit comments on this proposed rule, identified by 0648–AX59, and the regulatory impact review (RIR) prepared for the proposed rule by any of the following methods:

- Electronic submissions: Submit all electronic public comments via the Federal e-Rulemaking portal, at *http://www.regulations.gov*.
- Mail: William L. Robinson, Regional Administrator, NMFS Pacific Islands Regional Office (PIRO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814. Include the identifier ''0648–AX59'' in the comments.

Instructions: All comments received are part of the public record and generally will be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (if submitting comments via the Federal e-Rulemaking portal, enter ''N/A'' in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

An initial regulatory flexibility analysis (IRFA) prepared under the authority of the Regulatory Flexibility Act (RFA) is included in the Classification section of the **SUPPLEMENTARY INFORMATION** section of this proposed rule.

Copies of the RIR and copies of the environmental assessment (EA) prepared under the authority of the National Environmental Policy Act are available at *http://www.fpir.noaa.gov/IFD/ifd_documents_data.html* or may be obtained from William L. Robinson, Regional Administrator, NMFS PIRO (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Tom Graham, NMFS PIRO, 808–944–2219.

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is also accessible at *http://www.gpoaccess.gov/fr*.

Background on the Convention and the WCPFC

The Convention entered into force in June 2004. The full text of the Convention is available at: *http://www.wcpfc.int/convention.htm*. The area of application of the Convention, or the Convention Area, comprises the majority of the western and central Pacific Ocean (WCPO). In the North Pacific Ocean the eastern boundary of the Convention Area is at 150° W. long. A map showing the boundaries of the Convention Area is available at: *http://www.wcpfc.int/pdf/Map.pdf*. The Convention focuses on the conservation and management of highly migratory species (HMS) and the management of fisheries for HMS, and has provisions related to non-target, associated, and dependent species in such fisheries.

The Western and Central Pacific Fisheries Commission (WCPFC), established under the Convention, is comprised of the Members, including Contracting Parties to the Convention and fishing entities that have agreed to be bound by the regime established by the Convention. Other entities that participate in the WCPFC include Participating Territories and Cooperating Non-Members. Participating Territories participate with the authorization of the Contracting Parties with responsibility for the conduct of their foreign affairs. Cooperating Non-Members are identified by the WCPFC on a yearly basis. In accepting Cooperating Non-Member status, such States agree to implement the decisions of the WCPFC in the same manner as Members.

The current Members of the WCPFC are Australia, Canada, China, Chinese Taipei (Taiwan), Cook Islands, European Community, Federated States of Micronesia, Fiji, France, Japan, Kiribati, Korea, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Philippines, Samoa, Solomon Islands, Tonga, Tuvalu, United States, and Vanuatu. The current Participating Territories are French Polynesia, New Caledonia and Wallis and Futuna (affiliated with France); Tokelau (affiliated with New Zealand); and American Samoa, the CNMI and Guam (affiliated with the United States). The Cooperating Non-Members for 2009 are Belize, El Salvador, Indonesia, Mexico, and Senegal.

International Obligations of the United States under the Convention

The United States ratified the Convention in 2007 and in doing so became a Contracting Party to the Convention and a Member of the WCPFC. From 2004 until that time, the United States participated in the WCPFC as a Cooperating Non-Member. As a Contracting Party to the Convention and a Member of the WCPFC, the United States is obligated to implement the decisions of the WCPFC in a legally binding manner. The WCPFC Implementation Act (16

U.S.C. 6901 *et seq.*), enacted in 2007, authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard (USCG) is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the WCPFC. The authority to promulgate regulations has been delegated to NMFS.

WCPFC Decision Regarding Bigeye Tuna in Longline Fisheries

At its Fifth Regular Session, in December 2008, the WCPFC adopted Conservation and Management Measure (CMM) 2008–01 related to bigeye tuna and yellowfin tuna (*Thunnus albacares*) in the WCPO. The CMM, available with other decisions of the WCPFC at *http://www.wcpfc.int/decisions.htm*, places certain obligations on the WCPFC's Members, Participating Territories, and Cooperating Non-members (collectively, CCMs). With respect to bigeye tuna, the CMM is based in part on the finding by the WCPFC Scientific Committee that the stock of bigeye tuna in the WCPO is experiencing a fishing mortality rate greater than the rate associated with maximum sustainable yield. The Convention calls for the WCPFC to adopt measures designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors. Accordingly, CMM 2008–01 has the stated objective of reducing, over the period 2009–2011, the fishing mortality rate for bigeye tuna in the WCPO by at least 30 percent from a specified historical baseline. Among other provisions, the CMM establishes specific catch limits for bigeye tuna captured in CCMs' longline fisheries for the years 2009, 2010, and 2011. The limits do not apply to Participating Territories or small island developing States undertaking responsible development of their domestic fisheries. The limits are prescribed relative to catches made during specified baseline periods, which for the United States is 2004. For fleets of WCPFC Members with bigeye tuna catch baselines of less than 5,000 mt and that land exclusively fresh fish, the specified limit is the baseline level less 10 percent, and is the same for each of the years 2009, 2010, and 2011.

Proposed Action

This proposed rule would provide for the timely implementation of the annual catch limit for bigeye tuna established by the WCPFC for U.S. longline fisheries for each of the years 2009 through 2011. This proposed rule would not apply to the longline fisheries of American Samoa, Guam, or the CNMI, as described further below.

The U.S. longline fisheries in the WCPO are generally regulated in accordance with the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (WP Pelagics FMP) developed by the Western Pacific Fishery Management Council (WPFMC) and the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (West Coast HMS FMP) developed by the Pacific Fishery Management Council (PFMC), pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*). As stated above, the WCPFC Implementation Act authorizes the Secretary of Commerce, who has delegated that authority to NMFS, to promulgate such regulations as may be necessary to implement the decisions of the WCPFC. The regulations may, in cases where the Secretary of Commerce has discretion in implementing the decisions of the WCPFC and where the regulations would govern fisheries under the authority of a Regional Fishery Management Council, be developed in accordance with the procedures established by the MSA to the extent practicable within the implementation schedule of the WCPFC. Accordingly, the MSA process could potentially serve to implement certain provisions of CMM 2008–01 that apply to the U.S. longline fisheries. The MSA process involves the development of management recommendations by the Regional Fishery Management Councils, which are then subject to the approval of, and implementation by, NMFS. The process also involves formal time periods for deliberation by the Councils and subsequent review, approval, and implementation by the Secretary of Commerce, through NMFS.

To comply with the international obligations of the United States under the Convention, NMFS is issuing a proposed rule under the WCPFC Implementation Act pertaining to the U.S. longline fleets in the Pacific Ocean for the discrete and limited purpose of implementing the bigeye tuna catch limit. Based on the longline fleet's fishing patterns in recent years, the proposed limit could be reached or exceeded in the third quarter of 2009. The WPFMC may wish to evaluate and recommend additional management measures under the MSA process.

The bigeye tuna limits established in CMM 2008–01 are termed ''catch'' limits. However, the baseline amount of bigeye tuna specified for the United States in the CMM, from which the limit is derived, is from information provided to the WCPFC by the United States. That information is expressed in terms of bigeye tuna that are retained on board, not captured, per se. Accordingly, the proposed rule would establish a limit on retained catches (as a proxy for catches) of bigeye tuna. The limit would have the purpose of reducing fishing mortality of WCPO bigeye tuna.

Establishment of the Limit

The annual limit for the United States would be established as the amount of bigeye tuna captured in the Convention Area by the Hawaii and west coast longline fleets in 2004 and retained on board, less 10 percent. The amount captured and retained in 2004, which is specified in CMM 2008–01 based on information provided by the United States to the WCPFC, was 4,181 mt. Therefore, the annual limit would be 3,763 mt. In accordance with CMM 2008–01, the limit would not apply to the longline fisheries of American Samoa, Guam, or the CNMI. For the purpose of this proposed rule, the longline fisheries of these three Participating Territories would be distinguished from the other longline fisheries of the United States as described below.

Under CMM 2008–01, the specified bigeye tuna catch limits do not apply to the fisheries of Participating Territories, including American Samoa, Guam, and the CNMI, provided that they are undertaking responsible development of their domestic fisheries. Because fisheries operated out of American Samoa, Guam, and the CNMI continue to be subject to U.S. fisheries laws and regulations, and since these Participating Territories generally do not exercise management authority over fishery resources found beyond their submerged lands, applying the longline bigeye tuna catch limit provisions of CMM 2008–01 raises a number of challenging considerations. For the purpose of implementing the bigeye tuna catch limits of CMM 2008–01, NMFS proposes to distinguish the longline fisheries of the three Participating Territories from the other longline fisheries of the United States primarily based upon where the bigeye tuna are landed. That is, NMFS proposes to treat bigeye tuna landed in the three Participating Territories, with certain exceptions, as fish that are harvested in support of the development of their domestic fisheries. Assigning catches in this manner closely aligns with current practice.

In reporting catches of longline-caught bigeye tuna to the WCPFC, NMFS' practice has been to attribute catches according to where the fish are landed. For example, fish that are landed in American Samoa are attributed to the American Samoa fisheries, and fish that are landed in Hawaii or on the U.S. west coast are attributed to the ''U.S. fisheries''. Under this proposed rule, NMFS would continue this practice, with some modifications. NMFS proposes that any bigeye tuna landed in one of the three Participating Territories that was caught by longline in the U.S. exclusive economic zone (EEZ) surrounding the Hawaiian Archipelago would be attributed to the ''U.S. fisheries'' and counted against the limit. As a general practice, tuna taken within the EEZ around Hawaii have been landed in Hawaii, and have acquired no direct or indirect connection to the fisheries of any of the three Participating Territories. Under these historic circumstances, treating bigeye tuna caught in the EEZ around Hawaii and landed in one of the three Participating Territories as being associated with the longline fisheries of that Participating Territory would potentially circumvent the conservation objectives of CMM 2008–01. However, bigeye tuna caught on the high seas of the Convention Area or within the EEZ surrounding the Participating Territories or the Pacific Island possessions, if landed in one of the three Participating Territories, would not be subject to the limit, provided that the fish are landed by a U.S. fishing vessel operated in compliance with one of the permits required under the regulations implementing the WP Pelagics FMP and the West Coast HMS FMP; specifically, a permit issued under 50 CFR 660.707 or 665.21. NMFS finds these modifications to current practices necessary in order to ensure that this proposed rule and the fishing patterns that result from it are consistent with the objectives of CMM 2008–01.

Announcement of the Limit Being Reached

Once NMFS determines in any of the years 2009, 2010, or 2011 that the limit is expected to be reached by a specific future date in that year, NMFS would publish a notice in the **Federal Register** announcing that specific restrictions will be effective on that specific future date until the end of the calendar year. NMFS would publish the notice at least seven calendar days before the effective date of the restrictions to provide fishermen advance notice of the restrictions. NMFS would also endeavor to make publicly available, such as on a web site, regularly updated estimates and/or projections of bigeye tuna catches in order to help fishermen plan for the possibility of the limit being reached.

Prohibited Activities Once the Limit is Reached

Starting on the announced date and extending through the last day of that calendar year, it would be prohibited to use a U.S. fishing vessel to retain on board, transship, or land bigeye tuna captured in the Convention Area by longline gear, except any bigeye tuna already on board a fishing vessel upon the effective date of the restrictions may be retained on board, transshipped, and/or landed, provided that they are landed within 14 days after the restrictions become effective. In the case of a vessel that has declared to NMFS pursuant to 50 CFR 665.23(a) that the current trip type is shallow-setting, the 14–day limit would be waived, but the number of bigeye tuna retained on board, transshipped, or landed must not exceed the number on board the vessel upon the effective date of the restrictions, as recorded by the NMFS observer on board the vessel. Furthermore, for the same reasons described above in establishing the proposed limit, bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed if they are landed in American Samoa, Guam, or the CNMI, provided that they were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago, and that they are landed by a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.21. Starting on the announced date and extending through the last day of that calendar year, it would also be prohibited to transship bigeye tuna caught in the Convention Area by longline gear to any vessel other than a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.21.

These restrictions would not apply to bigeye tuna caught by longline gear outside the Convention Area, such as in the eastern Pacific Ocean. However, to help ensure compliance with the restrictions related to bigeye tuna caught by longline gear in the Convention Area, there would be two additional, related, prohibitions that would be in effect starting on the announced date and extending through the last day of that calendar year. First, it would be prohibited to fish with longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip that is in progress at the time the announced restrictions go into effect. In that exceptional case, the vessel, unless on a declared shallow-setting trip, would still be required to land any bigeye tuna taken within the Convention Area within 14 days of the effective date of the restrictions, as described above. Second, if a vessel is used to fish using longline gear outside the Convention Area and the vessel enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel would have to be stowed in a manner so as not to be readily available for fishing while the vessel is in the Convention Area.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the WCPFC Implementation Act and other applicable laws, subject to further consideration after public comment.

NMFS prepared an EA that analyzes the effects of the proposed rule on the human environment. In the EA, NMFS compared the effects of the proposed rule and three alternatives to the proposed rule, including the no-action or baseline alternative and two action alternatives. Overall, the expected impacts on bigeye tuna and other living marine resources from the proposed rule or either of the two action alternatives are expected to be generally beneficial, because they would implement a catch limit where one does not currently exist. One of the action alternatives would prohibit longline fishing once the limit is reached, rather than just prohibiting the retention, transshipment, and landing of bigeye tuna. The other action alternative would prohibit deep-set longline fishing once the limit is reached, allowing shallow-set longline fishing in the Convention Area to continue, provided that no bigeye tuna and no yellowfin tuna are retained, transshipped, or landed. Both of these alternatives would likely have slightly greater beneficial impacts than the proposed rule on bigeye tuna and other living marine resources in the WCPO, but like the proposed rule, both alternatives would have only minor impacts. The impacts on the human environment from the proposed rule would be minor for the following reasons: the duration of the rule would be limited to three years, so unless similar or more restrictive actions are taken in the future, conditions would likely rebound to conditions similar to those under the no-action or baseline alternative; and the proposed rule would likely not cause substantial changes to the fishing practices and

patterns of the affected fleets. However, other present and reasonably foreseeable future actions for the conservation and management of HMS could cause similar beneficial effects. Together with the effects of those actions, the cumulative impacts on the affected environment of the proposed action could be greater than if the proposed rule were implemented in isolation. Specifically, implementation by the United States of the provisions of CMM 2008–01 applicable to purse seine vessels (which NMFS intends to do via a separate rulemaking) and implementation by other CCMs of the provisions of the CMM would enhance the beneficial impacts to bigeye tuna and other living marine resources. If the WCPFC adopts (and CCMs implement) similar or more restrictive measures after the three-year duration of CMM 2008–01, the beneficial impacts would be further enhanced (e.g., there could be a greater likelihood of attaining the objective of the CMM). In addition, should the Inter-American Tropical Tuna Commission (IATTC) adopt catch limits or other fishery restrictions for bigeye tuna, any shift in fishing effort to the eastern Pacific Ocean (EPO) from the proposed rule would be reduced and the beneficial effects on bigeye tuna would be increased. The stock structure of bigeye tuna in the Pacific Ocean is not well known, but there is some degree of mixing between fish in the EPO and fish in the WCPO, so any fishing mortality in the EPO would likely affect the status of the stock in the WCPO. The economic impacts of the proposed rule are addressed in the EA only insofar as they are related to impacts to the biophysical environment. Economic impacts are addressed more fully in the RIR and IRFA. A copy of the EA is available from NMFS (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA was prepared, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. The analysis follows:

The proposed rule would apply to owners and operators of U.S. vessels used for fishing using longline gear in the Convention Area, except those that are part of the longline fleets of American Samoa, Guam, and the CNMI. The total number of affected vessels is approximated by the number of vessels with Hawaii Longline Limited Access Permits (issued under 50 CFR 665.21). There are 164 such permits available. During the period 2006–2008 the number of vessels permitted ranged from 121 to 140. The number of vessels actually permitted as of February 2009 was 132. Owners and operators of U.S. longline vessels based on the U.S. west coast would also be affected by this proposed rule, but based on the inactivity of that fleet in the Convention Area since 2005, it is expected that very few, if any, such vessels would be affected. The Hawaii longline fleet targets bigeye tuna using deep sets, and during certain parts of the year, portions of the fleet target swordfish using shallow sets. In each of the years 2005 through 2008, the estimated numbers of Hawaii longline vessels that fished were 124, 127, 129, and 128, respectively. Of those vessels, the numbers that engaged in deep-setting were 124, 127, 129, and 127, and the numbers that engaged in shallow-setting were 31, 35, 27, and 24, respectively. The numbers that did both were 31, 35, 27, and 23, respectively. Most of the fleet's fishing effort has traditionally been in the Convention Area, but fishing has also taken place to the east of the Convention Area, as described further below. As an indication of the size of businesses in the fishery, average annual fleet-wide ex-vessel revenues during 2005–2007 were about $60 million. Given the number of vessels active during that period (127, on average), this indicates an average of about $0.5 million in annual revenue per vessel. Therefore, NMFS has determined that all vessels in the fishery are small entities based on the Small Business Administration's definition of a small fish harvester (i.e., gross annual receipts of less than $4.0 million).

The proposed rule would not establish any new reporting or recordkeeping requirements. The new compliance requirement would be for affected vessel owners and operators to cease retaining, landing, and transshipping bigeye tuna caught with longline gear in the Convention Area when the limit is reached in any of the years 2009, 2010, and 2011, for the remainder of the calendar year (with the exceptions and provisos described at the beginning of this section in the preamble). Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess.

Complying with the proposed rule could cause foregone fishing opportunities and associated economic losses in the event that the bigeye tuna limit is reached and the restrictions on retaining, landing, and transshipping bigeye tuna are imposed. These costs cannot be projected with any quantitative certainty. For the purpose of projecting baseline conditions under no action, this analysis relies on fishery performance from 2005 through 2008, since prior to 2005 the regulatory environment underwent major changes (the swordfish-directed shallow-set longline fishery was closed in 2001 and reopened in 2004 with limits on fishing effort and turtle interactions). Bigeye tuna catches (here and in the remainder of this IRFA, ''catches'' means fish that are caught and retained on board) from 2005 through 2008 suggest that there is a high likelihood of the proposed limit being reached in any of the years during which the limit would be in effect (2009, 2010, and 2011). The proposed limit, by prescription, is 10 percent less than the amount caught in the Convention Area in 2004. The proposed limit of 3,763 mt is less than the amount caught in any of the years 2005–2008, and it is 20 percent less than the annual average amount caught in that period. Furthermore, there has been an upward trend in annual bigeye tuna catches in the years 2005 through 2008.

If the bigeye tuna limit is reached in a given year, it can be expected that affected vessels would shift to the next most profitable fishing opportunity (which might be not fishing at all). Revenues from that alternative activity reflect the opportunity costs associated with longline fishing for bigeye tuna in the Convention Area. Therefore, the economic cost of the proposed rule is assumed to be less than the nominal losses incurred by the bigeye tuna limit and associated restrictions.

Upper bounds on potential economic costs can be estimated by examining the projected value of longline landings from the Convention Area that would not be made as a result of reaching the limit. Two no-action scenarios are used for the purpose of this analysis. In the more conservative scenario, it is assumed that fishing patterns in 2009–2011 would not depart from recent patterns; specifically, annual catches in 2009–2011 would be equal to the averages observed during 2005–2008. In the less conservative no-action scenario, it is assumed that the increasing trend in bigeye tuna catches in 2005–2008 would continue in 2009–2011 (there may be factors that inhibit continuation of the trend, such as the limit on vessel numbers, or the possibility of the size of the exploitable stock decreasing; nonetheless, continuation of the trend appears to be plausible). Average annual catches of bigeye tuna from the longline

fishery in the Convention Area in 2005–2008, as estimated by NMFS based on numbers of fish caught by date of capture from vessel logbook data, and average fish weights derived from landings data, were 4,712 mt. The upward trend in bigeye tuna catches in 2005–2008 (for the entire fishery, not limited to catches in the Convention Area), was an average annual increase of about 8 percent. If this rate continued, catches of bigeye tuna from the Convention Area in 2009, 2010, and 2011 would be about 5,300, 5,700, and 6,200 mt, respectively. Thus, with respect to the first no-action scenario, imposition of a catch limit of 3,763 mt would be expected to result in 20 percent less bigeye tuna being caught in 2009–2011 than under no action. With respect to the second no-action scenario, the limit would be expected to result in 29, 34, and 39 percent less bigeye tuna being caught in 2009, 2010, and 2011, respectively, than under no action (and over the entire 2009–2011 period, 34 percent less). In the deep-set fishery, catches of marketable species other than bigeye tuna would likely be affected in a similar way. After the limit is reached and landings are restricted, prices of bigeye tuna (e.g., that are caught in the EPO), as well as of other species landed by the fleet, could increase and thereby mitigate (to the extent vessels continue to fish and make landings) economic losses. Assuming no effects on prices, over the years 2009–2011, revenues to entities that participate exclusively in the deep-set fishery under the proposed rule would be, under the first no-action scenario, about 20 percent less than under no action, and under the second no-action scenario, about 34 percent less. If, under the more conservative no-action scenario, average annual ex-vessel revenues during 2005–2007 (about $0.5 million per vessel) are a good indicator of future revenues under no action, average per-vessel annual revenues under the proposed rule would be about $0.1 million less than under no action. Under the less conservative no-action scenario, if ex-vessel revenues under no action were to increase in proportion to bigeye tuna catches (8 percent annually), average per-vessel annual revenues under the proposed rule would be about $0.2 million less than under no action. Again, these estimates are for the purpose of estimating upper bounds on potential economic losses and do not account for revenues from alternative activities, some of which are discussed further below.

Impacts on profits would be less than impacts on revenues, because operating costs would be lower if a vessel ceases fishing after the catch limit is reached. Variable costs can be expected to be affected roughly in proportion to revenues, as both would stop accruing once a vessel stops fishing. But operating costs also include fixed costs, which are borne regardless of whether or not a vessel is used to fish. Thus, profits would be dampened proportionately more than revenues.

In addition to leading to lost revenues due to landing less fish, a prohibition on landing bigeye tuna could cause a decrease in ex-vessel prices paid for bigeye tuna and other products landed by affected entities. An interruption in supply of bigeye tuna and other species from the Hawaii longline fleet could result in the Hawaii market shifting to alternative sources of bigeye tuna. If such a shift were temporary; that is, limited to the duration of the prohibition on bigeye tuna landings, which would likely be a matter of weeks or months, then prices (once the prohibition is lifted) would probably not be affected. If, on the other hand, it leads to a more permanent change in the market (e.g., as a result of buyers wanting to mitigate the uncertainty in the continuity of supply from the Hawaii longline fishery), then locally caught bigeye tuna could face stiffer competition with bigeye tuna sourced elsewhere and consequently be subject to less demand (volume) and fetch lower prices than it would under the no-action scenario. In that event, revenues earned by affected entities would be impacted accordingly. It is not possible to predict the likelihood of this occurring or predict the magnitude of the economic effects.

As stated previously, actual compliance costs for a given entity might be less than the upper bounds described above because ceasing fishing would not necessarily be the most profitable opportunity in the event of the catch limit being reached. Alternative opportunities that would appear to be relatively attractive to affected entities include: (1) deep-set longline fishing for bigeye tuna and other species to the east of 150 W. long. boundary line of the Convention Area (the EPO), where there is currently no limit on bigeye tuna catches; (2) shallow-set longline fishing for swordfish in the Convention Area or the EPO; and (3) deep-set longline fishing in the Convention Area for species other than bigeye tuna. A fourth opportunity is also identified, but because its economic viability appears marginal at this time, it is discussed only briefly. This is deep-set longline fishing for bigeye tuna in the Convention Area and landing the bigeye tuna in American Samoa, Guam, or the CNMI (instead of Hawaii, the traditional landing point and main market). This would be permissible provided that the bigeye tuna were not caught in the portion of the EEZ around the Hawaiian Islands and they are landed by a U.S. vessel operated in compliance with a permit issued under the WP Pelagics FMP or the West Coast HMS FMP.

Before examining each of these potential opportunities in detail, it is important to note that under the proposed rule, it would be prohibited to fish with longline gear both inside and outside the Convention Area during the same trip (with the exception of a fishing trip that is in progress when the limit is reached and the restrictions go into effect). For example, after the restrictions go into effect, during a given fishing trip, a vessel could be used for longline fishing for bigeye tuna in the EPO or longline fishing for species other than bigeye tuna in the Convention Area, but not both. This reduced operational flexibility would bring costs, since it would constrain the potential profits from alternative opportunities collectively. Those costs cannot be quantified.

(1) With respect to deep-set fishing in the EPO, the proportion of the fishery's annual bigeye tuna catches that were captured in the EPO from 2005 through 2008 ranged from 2 percent to 22 percent, and averaged 11 percent. In 2005–2007, that proportion, which ranged from 2 percent to 11 percent, may have been constrained by the bigeye tuna catch limits established by NMFS to implement the decisions of the IATTC, the counterpart of the WCPFC in the EPO. By far most of the U.S. annual EPO bigeye tuna catch has typically been made in the second and third quarters of the year: in the period 2005–2008 the percentages caught in the first, second, third, and fourth quarters were 9, 25, 62, and 4 percent, respectively. These two historical patterns that relatively little of the bigeye tuna catch in the longline fishery has typically been made in the EPO (2–22 percent in 2005–2008) and that most EPO bigeye tuna catches have been made in the second and third quarters, with relatively few catches in the fourth quarter, when the catch limit would most likely be reached, suggest it would be relatively costly for at least some affected entities to shift to deep-set fishing in the EPO in the event of the limit being reached in the Convention Area. Furthermore, if the IATTC adopts bigeye tuna catch limits for the EPO for any of the years 2009–2011, the ability of business entities affected by this

proposed rule to shift fishing effort to the EPO would, of course, be constrained accordingly.

(2) With respect to the opportunity of shallow-set longline fishing for swordfish, entities that already engage in this component of the fishery and that would do so under the no-action scenario would bear little cost in the event of the limit being reached. The cost would be approximately equal to the revenues lost from not being able to retain or land bigeye tuna captured while shallow-setting in the Convention Area, or the cost, taking into account opportunity costs, of shifting to shallow-setting in the EPO, whichever is less. In the fourth quarters of 2005–2008, almost all shallow-setting effort took place in the EPO, and 96 percent of bigeye tuna catches were made there, so the opportunity cost would appear to be very little. During 2005–2008, the shallow-set fishery caught an annual average of 55 mt of bigeye tuna from the Convention Area. If the bigeye tuna catch limit is reached on September 30 (or even as early as July 31) in a given year, the WCPO shallow-set fishery at that point would be, on average, based on 2005–2008 data, 99 percent through its average annual bigeye tuna catches. Thus, imposition of the landings prohibition on September 30 could result in the loss of revenues from approximately 0.6 mt (1 percent of 55 mt) of bigeye tuna, which, based on recent ex-vessel prices, would be worth about $5,000. Expecting about 29 vessels to engage in the shallow-set fishery (the annual average in 2005–2008), the average value of those potentially lost annual revenues would be about $170 per vessel. These potential impacts are relatively small, but one additional effect could lead to greater costs to entities that engage in the shallow-set fishery.

Entities that have not historically participated in the shallow-set fishery would, in the event of the limit being reached, have a greater incentive to engage in shallow-setting than they otherwise would, so participation in the shallow-set fishery could be greater as a result of the catch limit being reached. Participation and fishing effort would be constrained, however, by the existing annual limits on the number of sets that may be made (2,120) and on the number of interactions that may occur with loggerhead (17) and leatherback (16) turtles. In the four full years that these limits have been in place, the fishery has been closed once (2006) as a result of reaching one of the turtle interaction limits. In the remaining three years (2005, 2007, and 2008), 76 percent, 76 percent, and 77 percent, respectively, of the 2,120–set limit on fishing effort was used. To the extent that participation and fishing effort in the shallow-set fishery are greater as a result of this proposed rule, traditional participants would bear costs associated with the greater competition for the available fishing effort. Those costs cannot be projected, but they are likely to be reflected in the price of shallow-set certificates, which each year are distributed free of charge and in equal shares to all holders of Hawaii Longline Limited Access Permits and subsequently traded among fishery participants. Increased competition in the shallow-set fishery could also lead lower prices for swordfish as a result of greater supply, and consequently lower returns to entities engaged in the shallow-set fishery. The costs could also be reflected in a higher likelihood of the turtle interaction limits being reached and the shallow-set fishery being closed (at all or earlier in the year than it otherwise would). It should be noted that the WPFMC has recommended that the shallow-set effort limit be removed and that the loggerhead interaction limit be increased. NMFS, which is responsible for approving and implementing (in this case, via rulemaking) recommendations of the WPFMC, has not yet acted on the WPFMC recommendations. If the recommendations are approved and implemented, there would be more potential for fishing effort to shift to the shallow-set fishery.

(3) The opportunity of deep-setting in the Convention Area for species other than bigeye tuna would seem, based on the lack of such fishing activity in the past, to be the least attractive and costliest of the three alternative opportunities examined here. Nonetheless, it is possible that affected entities could find it economically viable to place greater emphasis on targeting yellowfin tuna, albacore and other species that have in the past contributed relatively little to ex-vessel revenues in the fishery. Next to bigeye tuna, yellowfin tuna has been the most valuable species in the deep-set fishery, but the catch per unit of effort (CPUE) for yellowfin tuna has been considerably less than for bigeye tuna. The average annual CPUE for yellowfin tuna during 2005–2007 was 0.84 fish per 1,000 hooks, as compared to 3.73 fish per 1,000 hooks for bigeye tuna. Thus, unless fishing methods can be adjusted in ways to substantially increase catch rates (and/or weights) of species other than bigeye tuna, revenues per unit of effort would be substantially less during a bigeye tuna landings prohibition period. The extent to which such adjustments could be made is not known. Even if deep-set fishing is not an economically attractive opportunity without the ability to land bigeye tuna, it might be worthwhile for trips during which the limit is reached. In other words, after bigeye tuna restrictions become effective, it would allow vessels at sea to continue fishing to top off their holds with species other than bigeye tuna and thereby have the potential to lessen the adverse impacts of the restrictions.

Finally, with respect to deep-set longline fishing for bigeye tuna in the Convention Area and landing the fish in American Samoa, Guam, or the CNMI, there are three potentially critical constraints to this opportunity. First, whether the fish are landed by the vessel that caught the fish or by a vessel to which the fish were transshipped, the costs of a vessel steaming from the traditional fishing grounds in the vicinity of Hawaii to one of the territories would be substantial. Second, none of these three locales has large markets to absorb additional fresh sashimi-grade bigeye tuna. Third, transporting the bigeye tuna from these locales to larger markets, such as in Hawaii or Japan, would bring substantial costs. These cost constraints suggest that this opportunity has little potential to mitigate the economic impacts of the proposed rule on affected small entities.

The potential economic effects identified above would vary among individual business entities, but it is not possible to predict the range of variation.

All affected entities are believed to be small entities, so small entities would not be disproportionately affected relative to large entities.

NMFS has not identified any Federal rules that duplicate, overlap or conflict with the proposed rule.

NMFS has identified two alternatives to the proposed rule (in addition to the no-action alternative). One would prohibit longline fishing in the Convention Area once the limit is reached, rather than just prohibiting the retention, landing, and transshipment of bigeye tuna caught by longline in the Convention Area. The other alternative would prohibit deep-set longline fishing once the limit is reached, allowing shallow-set longline fishing in the Convention Area to continue, provided that no bigeye tuna and no yellowfin tuna are retained, landed, or transshipped. Both alternatives would result in greater economic impacts, relative to those of the proposed rule, on small entities, as they would narrow the

available opportunities in the event the catch limit is reached. NMFS prefers the proposed action over the two action alternatives because it would result in lesser adverse economic impacts. NMFS also considered the no-action alternative. Among all the alternatives, no action would have the least adverse economic impacts on affected entities in the short term, but NMFS has determined that it would fail to accomplish the objectives of the WCPFC Implementation Act, including satisfying the international obligations of the United States as a Contracting Party to the Convention.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: July 1, 2009.

John Oliver,

Deputy Assistant Administrator For Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300, subpart O, which was proposed to be added on May 22, 2009 (74 FR 23965) and was proposed to be further amended on June 1, 2009 (74 FR 26160), is proposed to be further amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 *et seq.*

2. In § 300.211, definitions of ''Fishing trip'', ''Hawaiian Archipelago'' and ''Longline gear'' are added, in alphabetical order, to read as follows:

§ 300.211 Definitions.

* * * * *

Fishing trip means a period of time during which a fishing vessel is used for fishing, beginning when the vessel leaves port and ending when the vessel lands fish.

* * * * *

Hawaiian Archipelago means the Main and Northwestern Hawaiian Islands, including Midway Atoll.

* * * * *

Longline gear means a type of fishing gear consisting of a main line that exceeds 1 nautical mile in length, is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached; except that, within the protected species zone, longline gear means a type of fishing gear consisting of a main line of any length that is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached, where ''protected species zone'' is used as defined at § 665.12 of this title.

* * * * *

3. In § 300.222, paragraphs (bb), (cc) and (dd) are added to read as follows:

§ 300.222 Prohibitions.

* * * * *

(bb) Use a fishing vessel to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area or to fish in contravention of § 300.224(d)(1) or (d)(2).

(cc) Use a fishing vessel to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area on the same fishing trip in contravention of § 300.224(d)(3).

(dd) Fail to stow longline gear as required in § 300.224(d)(4).

4. A new § 300.224 is added to read as follows:

§ 300.224 Longline fishing restrictions.

(a) For each of the years 2009, 2010, and 2011, there is a limit of 3,763 metric tons of bigeye tuna that may be captured by longline gear in the Convention Area by fishing vessels of the United States during the calendar year and retained on board.

(b) Bigeye tuna landed in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands will not be counted against the limits established under paragraph (a) of this section, provided that:

(1) The bigeye tuna were not caught in the portion of the exclusive economic zone surrounding the Hawaiian Archipelago; and

(2) The bigeye tuna were landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.21 of this title.

(c) NMFS will monitor retained catches of bigeye tuna with respect to the limit established under paragraph (a) of this section in each of the calendar years using data submitted in logbooks and other available information. After NMFS determines that the limit in any of the applicable years is expected to be reached by a specific future date, and at least seven calendar days in advance of that specific future date, NMFS will publish a notice in the **Federal Register** announcing that specific prohibitions will be in effect starting on that specific future date and ending at the end of the calendar year.

(d) Once an announcement is made pursuant to paragraph (c) of this section, the following restrictions will apply during the period specified in the announcement:

(1) A fishing vessel of the United States may not be used to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area, except as follows:

(i) Any bigeye tuna already on board a fishing vessel upon the effective date of the prohibitions may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective. In the case of a vessel that has declared to NMFS, pursuant to § 665.23(a) of this title, that the current trip type is shallow-setting, the 14–day limit is waived, but the number of bigeye tuna retained on board, transshipped, or landed must not exceed the number on board the vessel upon the effective date of the prohibitions, as recorded by the NMFS observer on board the vessel.

(ii) Bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed if they are landed in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, provided that:

(A) The bigeye tuna were not caught in the portion of the exclusive economic zone surrounding the Hawaiian Archipelago;

(B) Such retention, transshipment, and/or landing is in compliance with applicable laws and regulations; and

(C) The bigeye tuna are landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.21 of this title.

(2) Bigeye tuna caught by longline gear in the Convention Area may not be transshipped to a fishing vessel unless that fishing vessel is operated in compliance with a valid permit issued under § 660.707 or § 665.21 of this title.

(3) A fishing vessel of the United States may not be used to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip during which the prohibitions were put into effect as announced under paragraph (c) of this section, in which case the provisions of paragraphs (d)(1)(i) and (d)(1)(ii) of this section still apply.

(4) If a fishing vessel of the United States is used to fish in the Pacific Ocean using longline gear outside the Convention Area and the vessel enters

the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must, while in the Convention Area, be stowed in a manner so as not to be readily available for fishing; specifically, the hooks, branch or dropper lines, and floats used to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use.

[FR Doc. E9–16094 Filed 7–7–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 0906241088–91089–01]

RIN 0648–AX92

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Commercial Sector of the Reef Fish, Queen Conch, and Spiny Lobster Fisheries of Puerto Rico and the U.S. Virgin Islands; Control Date

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; consideration of a control date.

SUMMARY: NMFS announces that it is establishing a control date that may be used to control future access to the commercial sector of the reef fish, queen conch, and spiny lobster fisheries operating in the exclusive economic zone (EEZ) of the U.S. Caribbean. If changes to the management regime are developed and implemented under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), a control date could be used to limit the number of participants in these fisheries. This announcement is intended, in part, to promote awareness of the potential eligibility criteria for future access so as to discourage speculative entry into the fisheries while the Caribbean Fishery Management Council (Council) and NMFS consider whether and how access to the commercial sector of the reef fish, queen conch, or spiny lobster fishery should be controlled.

DATES: Comments must be received by August 7, 2009.

ADDRESSES: Comments, identified by RIN 0648–AX92, may be submitted by any one of the following methods:

- Electronic submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- Mail: Jason Rueter, NMFS Southeast Regional Office, Sustainable Fisheries Division, 263 13th Avenue South, Saint Petersburg, Florida 33701.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal eRulemaking Portal: *http://www.regulations.gov* enter ''NOAA-NMFS–2009–0137'' in the keyword search, then select ''Send a Comment or Submission.'' NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Jason Rueter; phone 727–824–5305; fax 727–824–5308; or Graciela Garcia-Moliner; phone 787–766–5927; fax 787–766–6239.

SUPPLEMENTARY INFORMATION: The commercial sector of the U.S. Caribbean reef fish fishery is managed under the Fishery Management (FMP) Plan for the Reef Fish Resources of Puerto Rico and the U.S. Virgin Islands, the commercial sector of the U.S. Caribbean queen conch fishery is managed under the FMP for the Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands, and the commercial sector of the U.S. Caribbean spiny lobster fishery is managed under the FMP for the Spiny Lobster Resources of Puerto Rico and the U.S. Virgin Islands. The FMPs were prepared by the Council, and implemented under the authority of the Magnuson-Stevens Act.

This notice would inform participants in the U.S. Caribbean reef fish, queen conch, and spiny lobster fisheries of the Council's intentions to consider limiting access within the commercial sector of the U.S. Caribbean reef fish, queen conch, or spiny lobster fisheries. Specifically, the Council may consider requiring a permit that would limit fishing in the EEZ to only those participants that have catch histories in excess of some minimum landings threshold or to those participants who possess a valid Territorial/Commonwealth Permit. Should the Council take such future action to further restrict participation in the commercial sector of the U.S. Caribbean reef fish, queen conch, or spiny lobster fishery, it intends to use March 24, 2009, as a possible control date regarding the eligibility of catch histories. This date was announced at the Council's March 2009 meeting. Publication of the control date in the **Federal Register** informs participants of the Council's considerations, and gives notice to anyone entering the fisheries after the control date they would not be assured of future access should a management regime be implemented using the control date as a means to restrict participation. Implementation of any such program would require preparation of an amendment to the FMPs and subsequent rulemaking with appropriate public comment periods.

Consideration of a control date does not commit the Council or NMFS to any particular management regime or criteria for eligibility in the commercial sector of the U.S. Caribbean reef fish, queen conch, or spiny lobster fishery. The Council may or may not make use of this control date as part of the qualifying criteria for participation in that sector of the fisheries. Fishermen are not guaranteed future participation in a fishery regardless of their entry date or intensity of participation in the fishery before or after the control date under consideration. The Council subsequently may choose a different control date or management regime that does not make use of a control date. The Council also may choose to take no further action to control entry or access to the fisheries, in which case the control date may be rescinded.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 1, 2009.

John Oliver,

Deputy Assistant Administrator For Operations, National Marine Fisheries Service.

[FR Doc. E9–16069 Filed 7–7–09; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 74, No. 129
Wednesday, July 8, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Rogue/Umpqua Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA Forest Service Action: Action of Meeting.

SUMMARY: The Rogue/Umpqua Resource Advisory Committee (RAC) will meet on Wednesday and Thursday, July 22 and 23, in Roseburg, Oregon, at the Umpqua National Forest Headquarters, 2900 NW. Stewart Parkway. On July 22, the meeting will begin at 9 a.m. and conclude at 4:30 p.m. On July 23, the meeting will begin at 8 a.m. and conclude at 4:15 p.m. Agenda items on July 22 include (1) update on fiscal year 2009 Title II projects at 9:15 a.m., (2) 30-minute public forum at 10 a.m., (3) review and vote on proposed projects for Lane County at 10:45 a.m., and (4) review and vote on proposed projects for Jackson County at 1:45 p.m. The agenda for July 23 includes (1) 30-minute public forum at 8:10 a.m., (2) review and vote on Douglas County projects at 8:40 a.m., (3) review and vote on Klamath County projects at 2:15 p.m., and (4) discussion of monitoring Title II projects at 3:45 p.m. Written public comments may be submitted prior to the meeting by sending them to Designated Federal Official Cliff Dils at the address given below before July 21, 2009.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Cliff Dils; Umpqua National Forest; 2900 NW. Stewart Parkway, Roseburg, Oregon 97470; (541) 957–3203.

Dated: June 29, 2009.

Gina Freel,

Acting Forest Supervisor, Umpqua National Forest.

[FR Doc. E9–15921 Filed 7–7–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Economic Surveys of U.S. Commercial Fisheries.

OMB Control Number: 0648–0369.

Form Number(s): NA.

Type of Request: Regular submission.

Number of Respondents: 7,000.

Average Hours per Response: 1 hour.

Burden Hours: 7,000.

Needs and Uses: This collection of economic data for United States (U.S.) commercial fisheries will continue to be used to address statutory and regulatory mandates to determine the quantity and distribution of net benefits derived from living marine resources as well as predict the economic impacts from proposed management options on commercial harvesters, shoreside industries, and fishing communities. In particular, the data will be used to meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act, the National Environmental Policy Act, the Regulatory Flexibility Act, Executive Order 12866 as well as a variety of state statutes. There are currently two individual surveys being conducted as part of this survey collection: Northeast Fishing Vessel Annual Cost Survey and West Coast Limited Entry Cost Earnings Survey.

Affected Public: Business or other for-profit organizations.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: July 1, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–15985 Filed 7–7–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Limits on Application of Take Prohibitions.

OMB Control Number: 0648–0399.

Form Number(s): None.

Type of Request: Regular submission.

Number of Respondents: 301.

Average Hours per Response: Research and other applications, and reports of aiding/rescuing salmon, 5 hours; annual reports, 2 hours.

Burden Hours: 1,705.

Needs and Uses: In accordance with Section 4(d) of the Endangered Species Act (ESA), the National Oceanic and Atmospheric Administration (NOAA) promulgates regulations that would prohibit ''take'' (*e.g.,* harassment or harm) of threatened salmonids. These regulations identify conservation-oriented programs or circumstances in which the ESA's take prohibitions would not apply. States, local governments, and other entities may submit information to demonstrate that a program qualifies to be within those specified programs or circumstances (and therefore would not be subject to the prohibitions).

Affected Public: State, local and tribal government; business and other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: July 1, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–15989 Filed 7–7–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Allocation of Resources for Fire Service and Emergency Medical Service.

OMB Control Number: None.

Form Number(s): None.

Type of Review: Regular submission.

Burden Hours: 4,427.

Number of Respondents: 33,200.

Average Hours Per Response: 8 minutes.

Needs and Uses: The information collection will be used to identify resource allocation strategies which most effectively mitigate community fire and health risks. The data will be collected in a format suitable for advanced regression analysis.

Affected Public: Not-for-profit institutions (fire department officials).

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395–5167, or *Jasmeet_K._Seehra@omb.eop.gov*).

Dated: July 1, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–15990 Filed 7–7–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. I.D. GF001]

Grants to Manufacturers of Certain Worsted Wool Fabrics

AGENCY: Department of Commerce, International Trade Administration

ACTION: Notice Announcing the Availability of Grant Funds

SUMMARY: The purpose of this notice is to inform potential applicants that the Department of Commerce is providing financial assistance in calendar year 2009 for U.S. manufacturers of certain worsted wool fabrics. Section 4002(c)(6)(A) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108-429, 118 Stat. 2603) (the ''Act'') authorizes the Secretary of Commerce to provide grants to persons (including firms, corporations, or other legal entities) who were, during calendar years 1999, 2000, and 2001, manufacturers of two categories of worsted wool fabrics. The first category are manufacturers of worsted wool fabrics, containing 85 percent or more by weight of wool, with average fiber diameters greater than 18.5 micron (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11); the total amount of available funds is $2,666,000, to be allocated among such manufacturers on the basis of the percentage of each manufacturers' production of worsted wool fabric included in HTS 9902.51.11. The second category are manufacturers of worsted wool fabrics, containing 85 percent or more by weight of wool, with average fiber diameters of 18.5 micron or less (HTS heading 9902.51.15, previously HTS heading 9902.51.12); the total amount of available funds is $2,666,000, to be allocated among such manufacturers on the basis of the percentage of each manufacturers' production of worsted wool fabric included in HTS 9902.51.15. Funding for the worsted wool fabrics grant program will be provided by the Department of the Treasury from amounts in the Wool Apparel Manufacturers Trust Fund (the ''Trust Fund''). The total amount of grants to manufacturers of worsted wool fabrics described in HTS 9902.51.11 shall be $2,666,000 in calendar year 2009. The total amount of grants to manufacturers of worsted wool fabrics described in HTS 9902.51.15 shall also be $2,666,000 in calendar year 2009.

DATES: Applications by eligible U.S. producers of certain worsted wool fabrics must be received and validated by Grants.gov, postmarked, or provided to a delivery service on or before 5 p.m. Eastern Daylight Standard Time on July 27, 2009. Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Applications received after the closing date and time will be rejected/returned to the sender without further consideration. Use of U.S. mail or another delivery service must be documented with a receipt. No facsimile or electronic mail applications will be accepted.

ADDRESSES: The standard application package is available at **http://www.grants.gov**. For applicants without internet access, an application package may be received by contacting Mr. Jim Bennett, Office of Textiles and Apparel, Rm 3100, U.S. Department of Commerce, Washington DC 20230, (202) 482-4058; email: James__Bennett@ita.doc.gov

FOR FURTHER INFORMATION CONTACT: Technical questions can be directed to Jim Bennett, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058; James__Bennett@ita.doc.gov. Grants-related administration questions concerning this program should be addressed to Beverly Manley, Department of Commerce Grants Officer, (202) 482-1370; beverly.manley@noaa.gov. For assistance with using grants.gov, contact support@grants.gov.

SUPPLEMENTARY INFORMATION:

The items listed below are required before an award can be made. Failure to submit items below by the application date will result in the application not being reviewed. Applicants must have produced in the United States, during calendar years 1999, 2000 and 2001, worsted wool fabrics of a kind described in HTS 9902.51.11 or 9902.51.15. Applicants must provide: (1) Company name, address, contact and phone number; (2) Federal tax identification number; (3) the name and address of

each plant or location in the United States where worsted wool fabrics of the kind described in HTS 9902.51.11 or HTS 9902.51.15 was woven by the applicant in 1999, 2000 and 2001; (4) the name and address of each plant or location in the United States where the applicant is weaving worsted wool fabrics of the kind described in HTS 9902.51.11 or HTS 9902.5115 as of the date of application; (5) the quantity, in linear yards, of worsted wool fabric production described in HTS 9902.51.11 or 9902.51.15, as appropriate, woven in the United States in each of calendar years 1999, 2000 and 2001; and (6) the value of worsted wool fabric production described in HTS 9902.51.11 or 9902.51.15, as appropriate, woven in the United States in each of calendar years 1999, 2000 and 2001.

This data must indicate actual production (not estimates) of worsted wool fabric of the kind described in HTS 9902.51.11 or 9902.51.15. At the conclusion of the application, the applicant must attest that ''all information contained in the application is complete and correct and no false claims, statements, or representations have been made.'' Applicants should be aware that, generally, pursuant to 31 U.S.C. 3729, persons providing a false or fraudulent claims, and, pursuant to 18 U.S.C. 1001, persons making materially false statements or representations, are subject to civil or criminal penalties, respectively. Information that is marked ''business confidential'' will be protected from disclosure to the full extent permitted by law.

Other Application Requirements: Complete applications must also include the following forms and documents: CD-346, Applicant for Funding Assistance; CD-511, Certification Regarding Lobbying; SF-424, Application for Federal Assistance; and SF-424B, Assurances - Non-Construction Programs.

Electronic Access: The federal funding opportunity announcement for this program can be accessed via the Grants.gov web site at **http://www.grants.gov**. The announcement will also be available by contacting the program officials identified under the section above labeled ''FOR FURTHER INFORMATION CONTACT''. Applicants must comply with all requirements contained in the federal funding opportunity announcement.

Statutory Authority: Section 4002(c)(6) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108-429, 118 Stat. 2603) (the ''Act''), and amended by Section 1633 of the Pension Protection Act of 2006 (Public Law 109-280). Division C, Title III, Section 325 of the Emergency Economic Stabilization Act of 2008, (Public Law 110-343) extended the availability of grant funds through 2014.

Funding Availability: The Secretary of Commerce is authorized under section 4002(c)(6)(A) of the Act to provide grants to manufacturers of certain worsted wool fabrics. Funding for the worsted wool fabrics grant program will be provided by the Department of the Treasury from amounts in the Trust Fund. The total amount of grants to manufacturers of worsted wool fabrics described in HTS 9902.51.11 shall be $2,666,000 in calendar year 2009. The total amount ofgrants to manufacturers of worsted wool fabrics described in HTS 9902.51.15 shall also be $2,666,000 in calendar year 2009.

Eligibility Criteria: The worsted wool fabrics grant program is open to persons (including firms, corporations, or other legal entities) who were, during calendar years 1999, 2000 and 2001, manufacturers of worsted wool fabrics in the United States of the kind described in HTS 9902.51.11 or 9902.51.15. Only manufacturers who weave worsted wool fabric in the United States as of the date of application shall be eligible for grant funds. Any manufacturer who becomes a successor-of-interest to a manufacturer of the worsted wool fabrics described in HTS 9902.51.11 or HTS 9902.51.15 during 1999, 2000 or 2001 because of a reorganization or otherwise, shall be eligible to apply for such grants.

Cost Sharing Requirements: No cost sharing or matching requirements is required for the worsted wool fabric program.

Evaluation And Selection Procedures: The general evaluation criteria and selection factors that apply to applications to this funding opportunity are summarized below. Further information about the evaluation criteria and selection factors can be found in the federal funding opportunity announcement.

Evaluation Criteria For Projects: For the worsted wool fabrics grant program, the technical reviewers will use the following criteria to evaluate the applications: (1) Whether the applicant (including persons, firms, corporations, or other legal entities) produced in the United States worsted wool fabrics of the kind described in HTS 9902.51.11 or 9902.51.15 during calendar years 1999, 2000 and 2001; (2) Whether the applicant (including persons, firms, corporations, or other legal entities) is weaving in the United States worsted wool fabric of the kind described in HTS 9902.51.11 or HTS 9902.51.15 as of the date of application; (3) Whether the applicant (including persons, firms, corporations, or other legal entities) was a successor-of-interest to a manufacturer who produced in the United States worsted wool fabric of the kind described in HTS 9902.51.11 or HTS 9902.51.15 during calendar years 1999, 2000 or 2001, because of a reorganization or otherwise; and (4) the quantity, in linear yards, of worsted wool fabric production described in HTS 9902.51.11 woven in the United States in each of calendar years 1999, 2000 and 2001; or the quantity, in linear yards, of worsted wool fabric production described in HTS 9902.51.15 woven in the United States in each of calendar years 1999, 2000 and 2001.

Review And Selection Process: All applications received in response to this announcement will be reviewed to determine whether they are complete and responsive to the content and form of application submission requirements as published in this notice. Responsive applications will be reviewed by an independent, objective panel composed of at least three individuals who are knowledgeable about worsted wool fabric production. The panel will conduct a technical review of applications based on the evaluation criteria listed above. The worsted wool fabrics grant program Selecting Official in the Office of Textiles and Apparel will make the award selection.

Selection Factors For Projects: For each applicant, the quantity, in linear yards, of worsted wool fabric production described in HTS 9902.51.11 woven in the United States in each of calendar years 1999, 2000 and 2001; or the quantity, in linear yards, of worsted wool fabric production described in HTS 9902.51.15 woven in the United States in each of calendar years 1999, 2000 and 2001. The grants are to be allocated among eligible applicants on the basis of the percentage of each manufacturers' production of the fabric described in HTS 9902.51.11 or HTS 9902.51.15, as appropriate, for calendar years 1999, 2000, and 2001, compared to the production of such fabric by all manufacturers who qualify for such grants.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs''.

Limitation Of Liability: In no event will International Trade Administration or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of

this announcement does not oblige International Trade Administration to award any specific project or to obligate any available funds.

The Department Of Commerce Pre-Award Notification Requirements For Grants And Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696), are applicable to this solicitation.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF-LLL and CD-346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348-0043, 0348-0044, 0348-0040, 0348-0046, and 0605-0001. Notwithstanding any other provision of law, no person is required to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866: This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act: Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 USC 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 USC 553 or any other law, the analytical requirements for the Regulatory Flexibility Act (5 USC 601 et seq.) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: July 2, 2009.

Janet E. Heinzen,

Acting Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. E9–16060 Filed 7–7–09; 8:45 am]

BILLING CODE 3510–DS

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review, Notice of Intent To Rescind in Part, and Notice of Intent Not To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from respondent Ta Chen Stainless Pipe Co., Ltd. (Ta Chen or respondent) and from Flowline Division of Markovitz Enterprises, Inc., Core Pipe (formerly known as Gerlin, Inc.), Shaw Alloy Piping Products, Inc., and Taylor Forge Stainless, Inc. (collectively, petitioners), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings (SSBWPFs) from Taiwan. Petitioners requested that the Department conduct an administrative review of Ta Chen, Liang Feng Stainless Steel Fitting Co., Ltd. and Liang Feng Enterprise (Liang Feng), Tru-Flow Industrial Co., Ltd. (Tru-Flow), Censor International Corporation (Censor), and PFP Taiwan Co., Ltd. (PFP).

With regard to Ta Chen, the Department preliminarily determines that SSBWPFs from Taiwan have been sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The Department also finds that revocation of the order with respect to Ta Chen is not warranted under 19 CFR 351.222(b)(2).

Based on Tru-Flow's, Liang Feng's, Censor's, and PFP's certified statements, and information from U.S. Customs and Border Protection (CBP) indicating that these companies had no shipments to the United States of the subject merchandise during the period of review (POR), we hereby give notice that we intend to rescind the review regarding these companies. For a full discussion of the intent to rescind with respect to Liang Feng, Tru-Flow, Censor, and PFP, please refer to the ''Notice of Intent to Rescind in Part'' section of this notice.

If these preliminary results of review of Ta Chen's sales are adopted in the final results, we will instruct CBP to assess antidumping duties on appropriate entries based on the difference between the constructed export price (CEP) and the normal value (NV). Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* July 8, 2009.

FOR FURTHER INFORMATION CONTACT: John Drury or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Period of Review

The POR for this administrative review is June 1, 2007, through May 31, 2008.

Background

On June 16, 1993, the Department published in the **Federal Register** the antidumping duty order on SSBWPFs from Taiwan. *See Amended Final Determination and Antidumping Duty Order: Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan,* 58 FR 33250 (June 16, 1993) (*LTFV Order*). On June 9, 2008, the Department published a notice of opportunity to request administrative review for the period June 1, 2007, through May 31, 2008. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 73 FR 32557 (June 9, 2008).

In accordance with 19 CFR 351.213(b)(1) and (2), on June 27, 2008, petitioners requested an antidumping duty administrative review for Ta Chen, Liang Feng, Tru-Flow, Censor, and PFP. On June 30, 2008, Ta Chen requested an administrative review in accordance with 19 CFR 351.213(b)(1) and (2). Ta Chen also requested, under 19 CFR 351.222(b)(2) and (e), that the antidumping duty order on SSBWPFs, as it relates to Ta Chen, be revoked based on the absence of dumping, and included with its request certain company certifications regarding revocation.

On July 30, 2008, the Department published the notice of initiation of this administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Administrative Review,* 73 FR 44220 (July 30, 2008).

On August 25, 2008, the Department issued its antidumping duty questionnaire to Ta Chen. On September 3, 2008, the Department issued its antidumping duty questionnaire to Liang Feng, Tru-Flow, Censor, and PFP. On September 29, 2008, the Department

received a letter from Tru-Flow, Liang Feng, Censor, and PFP stating that each company had no sales or shipments of subject merchandise to the United States during the POR. However, at the time that the letter was filed, the attached certifications of no shipments were for all firms except Liang Feng Enterprise. In addition, the certification from Censor was incomplete. Also, it was unclear from the certifications as to whether or not Liang Feng Stainless Steel Fitting Co., Ltd., and Liang Feng Enterprise were different names for the same company or were different companies. On September 30, 2008, Ta Chen submitted its response to section A of the Department's questionnaire. On October 1, 2008, Censor and Liang Feng resubmitted certifications that neither company had shipments of certain stainless steel butt-weld pipe fittings from Taiwan during the POR.

On October 16, 2008, Ta Chen submitted its responses to sections B, C, and D of the Department's questionnaire. On November 5, 2008, Ta Chen submitted unsolicited revisions to the databases for both its home market and United States sales, as well as revisions to the cost database.

On January 23, 2009, the Department issued a supplemental section D questionnaire. On February 5, 2009, petitioners submitted comments regarding Ta Chen's sections B and C response. On February 25, 2009, Ta Chen responded to the Department's January 23, 2009, section D supplemental questionnaire. On February 27, 2009, the Department issued a sections A–C supplemental questionnaire.

On March 5, 2009, the Department extended the time limit for the preliminary results of this administrative review by 120 days, to not later than June 30, 2009. *See Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 9590 (March 5, 2009).

On March 9, 2009, petitioners submitted comments with respect to Ta Chen's section D supplemental questionnaire response. On March 12, 2009, the Department issued a second section D supplemental questionnaire. On March 27, 2009, Ta Chen submitted separate responses to the section A–C supplemental questionnaire and the second section D supplemental questionnaire. Ta Chen submitted additional information with respect to the section D supplemental response on April 3, 2009. On April 9, 2009, the Department issued the third section D supplemental questionnaire. Ta Chen submitted a response to the third section D supplemental questionnaire on April 17, 2009.

On April 22, 2009, the Department issued its verification agenda outlining the general procedures for the Department's verification of Ta Chen's cost information in Taiwan. Ta Chen submitted an unsolicited supplemental section D response on April 27, 2009. The Department verified Ta Chen's cost information as submitted on the record, in Tainan, Taiwan from May 4, 2009, through May 8, 2009. *See* Verification of the Cost Response of Ta Chen Stainless Steel Pipe Co., Ltd. in the Antidumping Duty Administrative Review of Stainless Steel BWPF from Taiwan (Ta Chen Verification Report), dated June 29, 2009. The Department issued the second section A–C supplemental questionnaire on May 28, 2009. Ta Chen submitted a response to the second section A–C supplemental questionnaire on June 12, 2009. The Department issued a third section A–C supplemental questionnaire on June 12, 2009. Ta Chen submitted a response to the third section A–C supplemental questionnaire on June 22, 2009.

Notice of Intent To Rescind Review in Part

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or with respect to a particular exporter or producer, if the Secretary concludes that there were no entries, exports, or sales of the subject merchandise during the POR. *See, e.g., Certain Oil Country Tubular Goods from Mexico: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission,* 71 FR 27676–78 (May 12, 2006); *Stainless Steel Sheet and Strip in Coils from Japan: Final Rescission of Antidumping Duty Administrative Review,* 71 FR 26041 (May 3, 2006).

On September 29, 2008 and October 1, 2008, Liang Feng, Tru-Flow, PFP, and Censor submitted certifications on the record certifying that their firms had no sales, entries, or exports of SSBWPFs to the United States during the POR. To confirm their statements, the Department conducted CBP inquiries in order to determine that there were no identifiable entries of SSBWPFs during the POR manufactured or exported by Liang Feng, Tru-Flow, PFP or Censor. There was no evidence of entries from these companies. *See* Memorandum to the File, through Angelica Mendoza, Program Manager, from John Drury, Analyst, Ta Chen Stainless Pipe Co., Ltd. No Shipments Inquiry, dated May 26, 2009. Therefore, in accordance with 19 CFR 351.213(d)(3), the Department preliminarily intends to rescind this review with respect to Liang Feng, Tru-Flow, PFP and Censor.

Notice of Intent Not To Revoke Order In Part

On June 30, 2008, Ta Chen requested that, pursuant to 19 CFR 351.222(b)(2), the Department revoke it from the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan at the conclusion of this administrative review. Ta Chen submitted along with its revocation request a certification stating that: (1) The company sold subject merchandise at not less than NV during the POR, and that in the future it would not sell such merchandise at less than NV; (2) the company has sold the subject merchandise to the United States in commercial quantities during each of the past three years; and (3) the company agrees to immediate reinstatement of the antidumping duty order, if the Department concludes that the company, subsequent to revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(e).

In determining whether or not to revoke an antidumping duty order with respect to a particular producer/exporter under 19 CFR 351.222(b)(2), the Department considers whether: (1) The producer/exporter has sold the subject merchandise at not less than NV for a period of at least three consecutive years; (2) the producer/exporter has agreed to immediate reinstatement of the order if the Department finds that it has resumed making sales at less than NV; and (3) the continued application of the order is not otherwise necessary to offset dumping. In this case, our preliminary margin calculation shows that Ta Chen sold the subject merchandise at less than NV during the current review period. *See* ''Preliminary Results of the Review'' section below. Moreover, Ta Chen received antidumping duty margins above *de minimis* in the previous two administrative reviews. Ta Chen makes its request predicated on the assumption that action by the Court of International Trade will result in recalculations for both administrative reviews of margins at zero or *de minimis.* However, it is not the Department's policy to take pending court appeals into account when determining whether revocation of the merchandise produced and exported by a particular company from an existing antidumping duty order is warranted. *See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and Determination To Revoke in Part,* 73 FR

66218, 66219 (Nov. 7, 2008). While we acknowledge that the Department's determinations in the two prior segments of this proceeding are currently in litigation, there is no final and conclusive judgment from any court supporting Ta Chen's arguments or invalidating the Department's findings in the prior administrative reviews. Therefore, we preliminarily find that Ta Chen has sold subject merchandise at less than NV within the period of at least three consecutive years. Accordingly, we preliminarily determine, pursuant to 19 CFR 351.222(b)(2), that revocation of the order with respect to Ta Chen is not warranted.

Scope of the Order

The products covered by this order are certain stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter. Certain welded stainless steel butt-weld pipe fittings are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; and (5) high pressures are contained within the system.

SSBWPFs come in a variety of shapes, with the following five shapes the most basic: Elbows, tees, reducers, stub ends, and caps. The edges of finished SSBWPFs are beveled. Threaded, grooved, and bolted fittings are excluded from the order. The SSBWPFs subject to the order are currently classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the review is dispositive. SSBWPFs manufactured to American Society of Testing and Materials specification A774 are included in the scope of this order.

Product Comparisons

For the purpose of determining appropriate product comparisons to SSBWPFs sold in the United States, we considered all SSBWPFs covered by the scope that were sold by Ta Chen in the home market during the POR to be ''foreign like products,'' in accordance with section 771(16) of the Act. Where there were no contemporaneous sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the physical characteristics reported by Ta Chen, as follows: Specification, seam, grade, size and schedule.

The record shows that Ta Chen both purchased from and entered into tolling arrangements with unaffiliated Taiwanese manufacturers of SSBWPFs. We have preliminarily determined that Ta Chen is the sole exporter of the SSBWPFs under review, as the record evidence does not indicate that these manufacturers had knowledge that the purchased SSBWPFs would be exported to the United States. *See* Analysis Memorandum for the Preliminary Results of the 2007–2008 Administrative Review of the Antidumping Duty Order of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Ta Chen Stainless Pipe Co., Ltd. (June 30, 2009) (Analysis Memorandum).

Section 771(16)(A) of the Act defines ''foreign like product'' to be ''{t}he subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise.'' Thus, consistent with the Department's past practice in reviews under this order, for products that Ta Chen has identified with certainty that it purchased from a particular unaffiliated producer and resold in the U.S. market, we have restricted the matching of products to products purchased by Ta Chen from the same unaffiliated producer and resold in the home market. *See, e.g., Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part,* 73 FR 38972 (July 8, 2008) (unchanged in the final results) and *Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part,* 71 FR 39663 (July 13, 2006) (unchanged in the final results). For those products which Ta Chen cannot identify with certainty the producers from which certain merchandise was purchased, the Department has applied facts available. *See* ''Application of Facts Available'' section below.

Date of Sale

The Department's regulations state that it will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale. *See* 19 CFR 351.401(i). If the Department can establish ''a different date {that} better reflects the date on which the exporter or producer establishes the material terms of sale,'' the Department may choose a different date. *Id.*

In the present review, Ta Chen claimed that invoice date should be used as the date of sale for its sales in the home market and to the United States. *See* Ta Chen's section A questionnaire response, dated September 30, 2008, at 20–22. For home market (HM) sales, the Department examined whether the date Ta Chen issued its *pro forma* invoice or its actual invoice best reflects the date of sale. Based upon our review of the record evidence, we have preliminarily determined that actual invoice date should be the sale date because the material terms are set on the invoice date, and can potentially be changed up until the point of invoice date. This methodology is consistent with the practice in all the previous reviews of this proceeding. *See* Ta Chen's section B through D questionnaire response, dated October 16, 2008, at B–8 through B–10 and C–8 through C–10. For U.S. sales, Ta Chen reported only constructed export price (CEP) sales, and we used the invoice date (or shipment date, if the shipment date occurred before the invoice date) for sales to the first unaffiliated U.S. customer as changes to the terms of the sale may occur up to the issuance of the invoice (or shipment of the merchandise, if the shipment date occurred before the invoice date). *See* Ta Chen's section A questionnaire response, dated September 30, 2008, at 20–22.

Fair Value Comparisons

To determine whether sales of SSBWPFs by Ta Chen to the United States were made at prices below NV, we compared CEP to NV, as described below. Pursuant to section 777A(d)(2) of the Act, we compared the CEPs of individual U.S. transactions to the monthly weighted-average NV of the foreign like product.

Constructed Export Price

Section 772(b) of the Act defines CEP as ''the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter * * *'' Consistent

with recent past reviews, pursuant to section 772(b) of the Act, we calculated the price of Ta Chen's sales based on CEP because the sale to the first unaffiliated U.S. customer was made by Ta Chen's U.S. affiliate, Ta Chen International (TCI). *See* Analysis Memorandum, dated June 30, 2009. Ta Chen has two channels of distribution for U.S. sales: (1) Ta Chen ships the merchandise to TCI for inventory in its warehouses and subsequent resale to unaffiliated buyers (stock sales), and (2) Ta Chen ships the merchandise directly to TCI's U.S. customer (indent sales). *See* Ta Chen's section A questionnaire response, dated September 30, 2008, at A–16. The Department finds that both stock and indent sales qualify as CEP sales because the original sale is between TCI and the U.S. customer. In addition, TCI handles all communication with the U.S. customer, from customer order to receipt of payment, and incurs the risk of non-payment. Also, TCI generally handles customer complaints concerning issues such as product quality, specifications, delivery, and product returns. TCI is also responsible for payment of the ocean freight for all U.S. sales, while Ta Chen arranges the ocean freight logistics and paperwork. *See* Ta Chen's section C questionnaire response, dated October 16, 2008, at C–26 through C–28 and Appendix 30 and the section A–C supplemental response, dated March 27, 2009, at 9.

We calculated CEP based on ex-warehouse or delivered prices to unaffiliated purchasers in the United States and, where appropriate, we added billing adjustments and deducted discounts. In accordance with section 772(d)(1) of the Act, the Department deducted direct and indirect selling expenses, including inventory carrying costs incurred by TCI for stock sales, related to commercial activity in the United States. We also made deductions for movement expenses, which include foreign inland freight, foreign brokerage and handling, ocean freight, containerization expense, Taiwan harbor construction tax, marine insurance, U.S. inland freight, U.S. brokerage and handling, and U.S. customs duties. For indent sales, we also made deductions for U.S. port warehousing expenses. *See* Ta Chen's section A–C supplemental response, dated March 27, 2009, at 20–21. Finally, in accordance with sections 772(d)(3) and 772(f) of the Act, we deducted CEP profit.

Normal Value

1. Home Market Viability

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Ta Chen's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. As Ta Chen's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. *See* Ta Chen's section A response, dated September 30, 2008, at 2 and Exhibit 1.

2. Cost of Production Analysis

Because we disregarded sales below the cost of production (COP) in the prior administrative review, we have reasonable grounds to believe or suspect that sales by Ta Chen in its home market were made at prices below the COP, pursuant to sections 773(b)(1) and 773(b)(2)(A)(ii) of the Act. *See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part,* 73 FR 38972 (July 8, 2008), and *Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review,* 74 FR 1174 (January 12, 2009).

Therefore, pursuant to section 773(b) of the Act, we conducted a COP analysis of HM sales by Ta Chen.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the respondent's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses, financial expenses and all costs and expenses incidental to packing the merchandise. *See* ''Test of Home Market Sales Prices'' section below for treatment of home market selling expenses. In our COP analysis, we have relied upon Ta Chen's cost of production (''COP'') and constructed value (''CV'') information from the company's submissions dated April 3, 2009, as amended April 27, 2009, (''Revised Section D Database'') except in the following instances.

First, we adjusted Ta Chen's reported direct material costs to reflect the actual costs of the direct material used to produce the merchandise under consideration produced during the POR (i.e., pipe). We adjusted the reported pipe costs because we found that the reported costs do not reasonably reflect the costs incurred to produce the merchandise under consideration during the POR in accordance with section 773(f)(1)(A) of the Act. The reported pipe costs do not reflect actual costs because the direct material variances used to calculate the costs as reported in Ta Chen's normal books and records include amounts accumulated from prior to the POR.

To determine the adjustment to Ta Chen's reported per-unit direct material costs, we relied on the results of our analysis of nineteen control numbers (''CONNUMs'') for which the monthly per-unit standard direct material costs and related production quantities were available on the record of this proceeding. We recalculated the monthly per-unit direct material costs for these CONNUMs by applying the related monthly variances incurred by the pipe plant to the standard monthly direct material costs of each CONNUM. We calculated the monthly variances of the pipe plant as the ratio of the total actual material and conversion costs incurred by the pipe plant for a particular month to the total standard costs incurred by the pipe plant for that month. We calculated the revised weight-averaged POR per-unit direct material cost per kg for each of the nineteen CONNUMs, determined the percentage difference between the revised and reported direct material costs of each of the CONNUMs, and then calculated one overall weight-averaged percentage of difference based on the production quantities (*i.e.* weight) of the CONNUMs. We applied this adjustment to the per-unit direct material costs of all CONNUMs reported as self-produced or subcontracted.

Second, we reduced the costs of Ta Chen's self-produced and subcontracted products for the purchase price variance incurred on purchased products. In its normal books and records, Ta Chen assigns any purchase price variances incurred on the purchased products among all products whether purchased, self-produced, or subcontracted. We find that Ta Chen's methodology, which was used as the basis for the company's reported costs, is distortive because the purchase price variance included in the costs of the self-produced and subcontracted products does not relate to the self-produced and subcontracted products. Therefore, for purposes of these preliminary results, we have adjusted the reported costs of the self-produced and subcontracted products to exclude the purchase price variance from those costs.

Finally, we revised the numerator of Ta Chen's reported general and administrative (''G&A'') expense rate to include certain expenses excluded by Ta Chen. We also reduced the numerator of the G&A expense rate for gains realized in FY 2007 on the disposals of assets. *See* Memorandum from LaVonne Clark, Senior Accountant, through Michael P. Martin, Lead Accountant, to Neal M. Halper, Director, Office of Accounting: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Ta Chen Stainless Steel Pipe Co., Ltd., June 30, 2009.

B. Test of Home Market Prices

We compared the weighted-average COP to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made within an extended period of time in substantial quantities, and were not at prices that permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act.

C. Results of COP Test

In accordance with section 773(b)(1) of the Act, when less than 20 percent of Ta Chen's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities, as defined by section 773(b)(2)(C) of the Act. When 20 percent or more of Ta Chen's sales of a given product during the POR were at prices less than the COP, we determined that such sales have been made in ''substantial quantities'' within an extended period of time, in accordance with sections 773(b)(2)(B) and (C) of the Act. In such cases, because we use POR average costs, we also determined that such sales were not made at prices that would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we appropriately disregarded below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

3. Price-to-Price Comparisons

As there were sales at prices above the COP for all product comparisons, we based NV on prices to home market customers. We deducted credit expenses and added interest revenue. In addition, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Finally, in accordance with section 773(a)(6) of the Act, we also deducted home market packing costs and added U.S. packing costs.

Application of Facts Available

Pursuant to section 776(a)(2)(D) of the Act, the Department finds that the use of facts available (''FA'') is appropriate with regard to Ta Chen's sales in the United States of merchandise purchased from other Taiwanese producers because the Department is unable to identify with certainty the actual producer of the merchandise being sold by Ta Chen. Additionally, based on information obtained in the verification, the Department finds that the use of FA is appropriate with regard to sales of two of Ta Chen's CONNUMs because evidence on the record indicates that all sales of these CONNUMs should be classified as material purchased from other manufacturers.

Section 776(a)(2) of the Act, provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that the Department must inform the interested party of the nature of any deficiency in its response and, to the extent practicable, allow the interested party to remedy or explain such deficiency. We find that pursuant to section 776(a)(2)(D) of the Act, the application of FA is warranted because Ta Chen failed to identify with certainty the manufacturer for certain sales of SSBWPFs made by Ta Chen and did not properly identify two CONNUMs in the sales databases as purchased products, per evidence collected at verification.

A. Identity of Manufacturers

Ta Chen not only manufactures subject fittings, but it also purchases completed fittings and has some toll processing performed by other unaffiliated Taiwanese manufacturers. *See* Ta Chen's section A questionnaire response dated September 30, 2008, at pages 2–4 and 31–32. Ta Chen indicated that it reported itself (*i.e.,* Ta Chen) as the manufacturer for sales observations which it produced. For those which were toll processed, Ta Chen identified the manufacturer or manufacturers that toll processed the type of fittings in question. In instances where the sale was made of fittings purchased from a supplier, Ta Chen stated that it reported the supplier or suppliers of the type of fittings in question as the manufacturer(s) in its sales databases. *See* Ta Chen's section B and C response, dated October 16, 2008, at B–37 through B–38, and C–54 through C–55; *see also* Ta Chen's supplemental section D questionnaire response, dated February 25, 2009, at 3 through 4, Ta Chen's supplemental section A–C questionnaire response, dated March 27, 2009, at 2 through 4 and Appendices Q2b and Q2c, Ta Chen's supplemental section A–C questionnaire response, dated June 22, 2009, at 1 through 3, Ta Chen's supplemental section A–C questionnaire response, dated June 22, 2009, at 1 through 3, Ta Chen's supplemental section A–C response, dated June 24, 2009, at 1 through 2 and its other June 24, 2009 supplemental section A–C response at 1 through 3. Once the fittings that are toll-produced or purchased enter into Ta Chen's inventory system, Ta Chen states that it is neither able to distinguish between the manufacturers that toll process merchandise nor able to distinguish merchandise from those that supply certain types of subject fittings that Ta Chen re-sells. *See* Ta Chen's supplemental section A–C questionnaire response, dated March 27, 2009, at 2 through 4 and Appendices Q2b and Q2c.

Appendices A2b and Q2c of the March 27, 2009 supplemental questionnaire response identifies fittings which are purchased, subcontracted, or manufactured by Ta Chen. These fittings are identified by control number (CONNUM). Thus, evidence on the record indicates that CONNUMs of merchandise purchased by Ta Chen were unique and were neither manufactured by Ta Chen nor toll produced. In addition, Appendix Q2c indicates that some of the fittings purchased from other producers were manufactured by only one producer during the POR. *Id.*

The Department preliminarily determines that it is able to segregate those sales which were toll-produced on behalf of Ta Chen from those sales of merchandise which were purchased from unrelated manufacturers. However, Ta Chen was unable to report the actual producer of the purchased fittings. *See* Analysis Memorandum dated June 30, 2009.

As noted above, section 776(a)(2) of the Act provides that, *inter alia,* if an interested party or any other person withholds information that has been requested by the Department or significantly impedes a proceeding under the antidumping statute, the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

We preliminarily find that the use of FA is warranted in accordance with section 776(a)(2)(D) of the Act, because Ta Chen did not specifically identify the manufacturer of the subject merchandise, as requested by the Department in its antidumping duty questionnaire and in its February 27, 2009, supplemental questionnaire. Consistent with section 782(d) of the Act, the Department requested clarification of Ta Chen's reporting of the manufacturers' identities with respect to the purchased fittings. However, Ta Chen reported that it ''could not determine the subcontracted items or purchased items from (the) specific subcontractor or vendor'' *See* Ta Chen's section A–C supplemental questionnaire response, dated March 27, 2009, at 2. Pursuant to section 776(a) of the Act, we determine that an application of FA to those sales identified as purchased from other manufacturers, and not identified specifically as produced by one company, is appropriate. Because Ta Chen has stated that it is unable to segregate merchandise once it enters into its accounting system, and because certain merchandise was identified as possibly being produced by more than one producer, the Department will apply FA to those sales of merchandise purchased from other sources where the producer is not specifically identified. As FA, the Department will apply to those sales identified as sales of purchased merchandise, where the producer is not specifically identified, the average rate calculated for all merchandise produced or toll processed by Ta Chen.

B. Control Numbers

As noted above, Ta Chen not only manufactures subject fittings, but also purchases completed fittings and has some toll processing performed by other unaffiliated Taiwanese manufacturers. During verification, Ta Chen stated to the Department that all of the fittings purchased from other manufacturers had certain identical physical characteristics. That is, if a fitting had a specific physical characteristic, it was purchased from a different manufacturer. *See* Verification of the Cost Questionnaire Responses of Ta Chen Stainless Pipe Co., Ltd. in the Antidumping Review of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan (Ta Chen Verification Report), June 29, 2009, at 14. However, for all sales of three CONNUMs, Ta Chen reported that these fittings were toll-produced rather than purchased.

We preliminarily find that the use of FA is warranted in accordance with section 776(a)(2)(D) of the Act, because Ta Chen did not sufficiently identify certain sales of the subject merchandise as purchased from other manufacturers, as requested by the Department in its antidumping duty questionnaire and in its February 27, 2009, supplemental questionnaire. Consistent with section 782(d) of the Act, the Department requested clarification of Ta Chen's reporting of the manufacturers' identities with respect to the purchased fittings. Despite Ta Chen's statements that it had identified all sales in terms of manufacturing type, evidence on the record indicates that Ta Chen did not identify these certain sales as purchased. *See* Ta Chen's section A–C supplemental questionnaire response, dated March 27, 2009, at 2. *See also* Ta Chen's section D supplemental questionnaire response, dated February 25, 2009, at 1–4; Ta Chen's section A–C supplemental questionnaire response, dated March 27, 2009, at 1–4 and Exhibits Q2b and Q2c; Ta Chen's Section A–C supplemental questionnaire response, dated June 22, 2009, at 1–3; and Ta Chen's section A–C supplemental questionnaire response, dated June 24, 2009, at 1–2, and its other supplemental questionnaire response, also dated June 24, 2009, at 1–3. Pursuant to section 776(a) of the Act, we determine that an application of FA to those sales identified as toll-produced that should be identified as purchased from other manufacturers is appropriate. Because Ta Chen did not segregate merchandise as purchased, the Department will apply FA to those sales of merchandise identified as toll-produced but having certain physical characteristics indicating that they were purchased from other manufacturers.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determined NV based on sales in the comparison market at the same level of trade (LOT) as the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market. For CEP, it is the level of the constructed sale from the exporter to the importer. To determine whether NV sales are at a different LOT than CEP sales, we examine different selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, where possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales for which we are unable to quantify a LOT adjustment, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP sales affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision).

Ta Chen reported two channels of distribution in the home market: unaffiliated distributors and end-users. We examined the selling activities reported for each channel of distribution and organized the reported selling activities into the following four selling functions: Sales process and marketing support, freight and delivery, inventory maintenance and warehousing, and warranty and technical services. We found that Ta Chen's level of selling functions to its home market customers for each of the four selling functions did not vary significantly by channel of distribution. *See* Ta Chen's section A response, dated September 30, 2008, at 16 through 24 and Appendix 30; *see also* Ta Chen's section A–C supplemental questionnaire response, dated March 27, 2009, at 4 through 11. Therefore, we preliminarily conclude that the selling functions for the reported channels of distribution constitute one LOT in the comparison market.

For CEP sales, we examined the selling activities related to each of the selling functions between Ta Chen and its U.S. affiliate, TCI. All of Ta Chen's sales to the United States were CEP sales made through TCI. There were two types of CEP sales; those sales from TCI's inventory to unaffiliated customers, and ''back-to-back'' CEP sales (called indent sales by Ta Chen) where merchandise is shipped directly from the foreign manufacturer/reseller to the unrelated U.S. customers. For indent sales, Ta Chen invoices TCI and TCI invoices the unrelated customers. Thus, while the channel of distribution for U.S. sales is from Ta Chen to TCI, there are different types of sales within this channel of distribution and different selling activities provided by

Ta Chen to TCI depending upon the type of CEP sale. However, the Department does not find these CEP sales to be at different LOTs. The types of customers are identical. Additionally, the selling functions provided by Ta Chen to TCI for both types of sales appear to be substantially similar. Therefore, we preliminary determine that Ta Chen's U.S. sales constitute a single LOT. *See* Analysis Memorandum dated June 30, 2009.

In analyzing the respective LOTs for home market sales and U.S. CEP sales, the Department's practice is to ''examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.'' *See, e.g., Certain Hot-Rolled Carbon Steel Flat Products From Romania: Preliminary Results of the Antidumping Duty Administrative Review,* 72 FR 44821, 44824 (''*HRS from Romania*'') (August 9, 2007) (unchanged in final results, *Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review,* 72 FR 71357 (December 17, 2007)). If the home market sales are at a different LOT than CEP sales and the difference affects price comparability, as manifested in a pattern of consistent price differences between sales on which NV is based and home market sales at the LOT of the export transaction, the Department makes a level of trade adjustment under Section 773(a)(7)(A) of the Act. *See HRS from Romania* at 44824. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under Section 773(a)(7)(B) of the Act (the CEP offset). *Id.* Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *See* 19 CFR 351.412(c)(2). Some overlap in selling activities will not preclude a determination that two sales are at different stages of marketing. *Id.* It is within this framework that the Department conducts its LOT analysis.

We compared the selling functions Ta Chen provided in the home market LOT with the selling functions provided to the U.S. LOT. Based on our analysis, we preliminarily determine that the HM LOT is not at a more advanced level than Ta Chen's U.S. LOT. As stated above, the Department analyzes selling activities in four categories: sales process and marketing support, freight and delivery, inventory maintenance and warehousing, and warranty and technical services. For the first category, the sales process and marketing support includes the following selling activities: customer contact, order acceptance, risk of non-payment, payment processing, market research, and travel and entertainment. The freight and delivery category includes packing and loading as well as freight and delivery. The inventory maintenance category stands alone, while the warranty and technical services category includes customer complaints, technical assistance, and after-sale services.

Of the twelve selling functions, Ta Chen reported that sales in the home market had higher selling activities in eleven of the twelve selling functions. However, based on our analysis of the evidence on the record, we preliminarily determine that five of the selling activities (order acceptance, inventory maintenance, market research, technical assistance, and packing/loading) are, on the whole, equal in both the home market LOT and CEP LOT. Additionally, we preliminarily determine that three of the selling functions (risk of non-payment, payment processing, and customer contact) are more intense in the home market LOT than in the CEP LOT. Also, we preliminarily determine that one of the selling functions (freight and delivery), is more intense in the U.S. market. Finally, for the travel and entertainment and the customer complaints selling functions, we preliminarily find that we are unable to determine with certainty the levels of selling activities in both markets but believe that they are substantially similar. Therefore, based on the Department's examination of the claimed selling functions, we preliminarily determine that the home market LOT is not at a more advanced stage than the CEP LOT and are not granting a CEP offset. *See* Analysis Memorandum dated June 30, 2009.

Currency Conversion

For purposes of the preliminary results, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the weighted-average dumping margin for the producer/exporter listed below for the period June 1, 2007, through May 31, 2008, to be as follows:

	Weighted-average margin
Ta Chen Stainless Pipe Co., Ltd	0.80%

Disclosure and Public Comment

The Department will disclose to parties to the proceedings the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Pursuant to 19 CFR 351.309, interested parties may submit cases briefs not later than 30 days after the date of publication of this notice or the first business day thereafter. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice or the first business day thereafter. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Interested parties who wish to request a hearing or to participate if one is requested must submit a written request to the Assistant Secretary for Import Administration, Room 1870, within 30 days of the date of publication of this notice or the first business day thereafter. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and, (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of the administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of this review the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific *ad valorem* rate for merchandise exported by Ta Chen which is subject to this review. The Department intends to issue assessment instructions to CBP 15 days after the publication of final results of this review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings:*

Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by Ta Chen or by any of the companies for which we are rescinding this review and for which Ta Chen or each no-shipment respondent did not know its merchandise would be exported by another company to the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed in the final results of review; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 51.01 percent, which is the ''all others'' rate established in the LTFV investigation. *See LTFV Order.* These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 30, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for AD/CVD Operations.

[FR Doc. E9–16114 Filed 7–7–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Preliminary Results of the 2007–2008 Administrative Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is currently conducting the 2007–2008 administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished (''TRBs''), from the People's Republic of China (''PRC''), covering the period June 1, 2007, through May 31, 2008. This administrative review covers one producer/exporter of the subject merchandise, *i.e.* Peer Bearing Company Changshan (''CPZ''). We preliminarily determine that CPZ made sales below normal value (''NV''). If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the period of review (''POR'') for which the importer–specific assessment rates are above de minimis.

Interested parties are invited to comment on these preliminary results. We will issue final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: July 8, 2009.

FOR FURTHER INFORMATION CONTACT: Frances Veith or Brendan Quinn, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4295 or (202) 482–5848, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 15, 1987, the Department published in the **Federal Register** the antidumping duty order on TRBs from the PRC.[1] On June 9, 2008, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on tapered roller bearings from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 32557 (June 9, 2008). On June 30, 2008, CPZ, an exporter of TRBs, requested that the Department conduct an administrative review of its sales. Additionally, on June 30, 2008, the Timken Company, of Canton, Ohio (''Petitioner'') requested that the Department conduct an administrative review of all entries of subject merchandise produced and/or exported by CPZ. On July 30, 2008, the Department published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of TRBs from the PRC for the period June 1, 2007, through May 31, 2008, for CPZ. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Administrative Review*, 73 FR 44220 (July 30, 2008).

On September 9, 2008, the Department issued its antidumping duty questionnaire to CPZ. CPZ submitted its Section A questionnaire response on October 8, 2008, a supplement to its Section A submission on October 15, 2008, its Section C questionnaire response on October 24, 2008, and its Section D questionnaire response on October 29, 2008. The Department issued CPZ a supplemental Section A questionnaire on January 29, 2009, a supplemental Section C questionnaire on February 17, 2009, and a supplemental Section D questionnaire and second supplemental Section A questionnaire on March 11, 2009. CPZ submitted its supplemental Section A questionnaire response on February 20, 2009, its supplemental Section C response on March 12, 2009, its second supplemental Section A questionnaire response on March 26, 2009, the first part of the supplemental Section D response and a revised Section C database on April 2, 2009, and the second part of the supplemental Section D response on April 16, 2009.

On February 19, 2009, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review by 90 days until June 1, 2009. *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic*

[1] *See Notice of Antidumping Duty Order: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China*, 52 FR 22667 (June 15, 1987).

of China: Extension of Time Limit for the Preliminary Results of the 2007–2008 Administrative Review of the Antidumping Duty Order, 74 FR 7661 (February 19, 2009). On April 27, 2009, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review by an additional 30 days until June 30, 2009. *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Extension of Time Limit for the Preliminary Results of the 2007–2008 Administrative Review of the Antidumping Duty Order*, 74 FR 19046 (April 27, 2009). The Department verified the accuracy of CPZ's submissions on April 29, 2009 and April 30, 2009 in Waukegan, Illinois, at the offices of Peer Bearing Company, CPZ's U.S. affiliate, and on May 28, 2009, through June 5, 2009, at CPZ's offices in Changshan, China. At the conclusion of the aforementioned verification, the Department verbally requested that CPZ submit a corrected U.S. sales and FOP database to include changes resulting from both the U.S. and Chinese verifications. On June 16, 2009, CPZ submitted the requested revised U.S. sales and FOP databases.

Period of Review

The POR is June 1, 2007, through May 31, 2008.

Scope of the Order

Imports covered by this order are shipments of tapered roller bearings and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15 and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Non–Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non–market economy (''NME'') country.[2] In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (''the Act''), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006). No party to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer's factors of production (''FOPs''), valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of the FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the ''Normal Value'' section below.[3]

The Department's practice with respect to determining economic comparability is explained in Policy Bulletin 04.1,[4] which states that ''OP {Office of Policy} determines per capita economic comparability on the basis of per capita gross national income, as reported in the most current annual issue of the *World Development Report* (The World Bank).''

On December 22, 2008, the Department identified six countries as being at a level of economic development comparable to the PRC for the specified POR: India, the Philippines, Indonesia, Colombia, Thailand, and Peru.[5] The Department considers the six countries identified in the Surrogate Countries Memo as ''equally comparable in terms of economic development.'' *See Policy Bulletin 04.1* at 2. Thus, we find that India, the Philippines, Indonesia, Colombia, Thailand, and Peru are all at an economic level of development equally comparable to that of the PRC.

On December 22, 2008, the Department invited all interested parties to submit comments on the surrogate country selection.[6] We also invited all interested parties to submit publicly available information to value factors of production for consideration in the Department's preliminary results of review.

On January 9, 2009, both Petitioner and CPZ submitted comments regarding the Department's selection of a surrogate country for the preliminary results. Petitioner requested that India be considered as the primary surrogate country, while CPZ requested the Department also consider Indonesia as a potential surrogate. With regard to the valuation of individual factors, Petitioner submitted publicly available information for the Department to consider for the preliminary results on November 14, 2008, December 3, 2008, and January 29, 2009. CPZ submitted publicly available information for the Department to consider on January 30, 2009, and on February 04, 2009. In its February 4, 2009, submission, CPZ requested that the Department also consider surrogate value data from Thailand.

The Department's *Policy Bulletin 04.1* provides guidance on identifying comparable merchandise and selecting a producer of comparable merchandise. The merchandise subject to the scope of the order is currently classifiable under subheadings 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15 and 8708.99.80.80 of the HTSUS.[7] For

[2] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3987 (January 22, 2009).

[3] *See also* the Department's memorandum entitled, ''Preliminary Results of the 2007-2008 Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Surrogate Value Memorandum,'' dated June 30, 2009 (''Surrogate Value Memo'').

[4] *See* the Department's Policy Bulletin No. 04.1, regarding, ''Non-Market Economy Surrogate Country Selection Process,'' (March 1, 2004) (''*Policy Bulletin 04.1*''), available on the Department's Website at http://ia.ita.doc.gov/policy/bull04-1.html.

[5] *See* the Department's Memorandum from Carol Showers, Acting Director, Office of Policy, to Wendy Frankel, Office Director, AD/CVD Operations, Office 8, regarding, ''Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings (''TRB'') from the People's Republic of China (''PRC''),'' dated December 22, 2008 (''Surrogate Countries Memo'').

[6] *See* the Department's letter regarding, *''2007-2008 Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings from the People's Republic of China''* requesting all interested parties to provide comments on surrogate-country selection and provide surrogate FOP values from the potential surrogate countries (*i.e.*, India, Indonesia, the Philippines, Thailand, Colombia, and Peru), dated December 22, 2008.

[7] *See Harmonized Tariff Schedule of the United States (2007) (Rev. 2)*, available at www.usitc.gov.

purposes of comparable merchandise analysis, the Department obtained world export data from World Trade Atlas, published by Global Trade Information Services, Inc. (''WTA'') for harmonized tariff schedule (''HTS'') subheadings 8482.20, 8482.20.00, 8482.91, 8482.91.00, 8482.99, 8482.99.00, 8483.20, 8483.20.00, 8483.20.90, 8483.30, 8483.30.00, 8483.30.90, 8483.90, 8483.90.00, 8708.99, 8708.99.99, 8708.99.19,[8] which show that India, the Philippines, Indonesia, Colombia, Thailand, and Peru are producers of comparable merchandise.[9] Thus, all countries listed in the Surrogate Countries Memo are considered as appropriate surrogates because each exported comparable merchandise. The Department used export data in its comparable merchandise analysis because the Department was unable to find production data for the potential surrogate countries. Therefore, we relied on each country's WTA export data of TRBs as a substitute for overall production data in the comparable merchandise analysis.

The *Policy Bulletin 04.1* also provides some guidance on identifying significant producers of comparable merchandise and selecting a producer of comparable merchandise. Further analysis was required to determine whether any of the countries which produce comparable merchandise are significant producers of that comparable merchandise. The data we obtained show that, in 2007, worldwide exports for HTS 8482.20 and 8482.20.00 ''Tapered roller bearings, including cone and roller assemblies'' from: India was approximately 10,073,266 units; Indonesia was approximately 6,631 Kg; Colombia was 683 units; the Philippines was 0 Kg; Thailand was approximately 570,362 units, and Peru was 719 units. From this analysis, only India and Thailand appear to be significant producers of comparable merchandise. Although CPZ submitted information on the record to demonstrate that Indonesia is a significant producer of comparable merchandise and should be considered for use as the primary surrogate country, we find that, while the information submitted by CPZ does show Indonesia to be a producer of comparable merchandise, the aforementioned WTA data shows that Indonesia is not a significant producer of said merchandise. CPZ also submitted production information to demonstrate that Thailand is a significant producer of comparable merchandise. However, CPZ submitted this Thai production data in support of its contention that the Department should consider Thai information to value certain FOPs (*see* ''Factor Valuations'' section below), but did not request that Thailand be considered for use as the primary surrogate country.

With respect to data considerations in selecting a surrogate country, it is the Department's practice that, ''if more than one country has survived the selection process to this point, the country with the best factors data is selected as the primary surrogate country.'' For the purpose of assessing data sources from potential surrogate countries, ''it is the Department's stated practice to use investigation or review period–wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and publicly available data.'' *See Policy Bulletin 04.1* at 4. Currently, the record contains surrogate value information from India, Thailand, and Indonesia. At present, the Indian information submitted to the record contains the most complete set of surrogate value information, as surrogate Indian import values have been submitted for nearly all of the relevant FOPs, and surrogate financial statements are available from an Indian producer of identical merchandise. Thus, the Department is preliminarily selecting India as the surrogate country on the basis that: (1) it is at a similar level of economic development to the PRC, pursuant to 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from India that we can use to value the factors of production. Therefore, we have calculated normal value using Indian prices when available and appropriate to value CPZ's factors of production.[10] In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of an administrative review, interested parties may submit publicly available information to value the factors of production within 20 days after the date of publication of the preliminary results.[11]

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assigned a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as further developed in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). However, if the Department determines that a company is wholly foreign–owned or located in a market economy, then a separate–rate analysis is not necessary to determine whether it is independent from government control.

The sole respondent in this review, CPZ, stated that it is a China–Foreign joint venture, owned by two shareholders: Changshan Jingmi Bearing Group Co., Ltd., a Chinese company, and Illinois Peer Bearing Company LLC, a U.S. company. Therefore, the Department must analyze whether CPZ has demonstrated the absence of both de jure and de facto government control

[8] WTA export statistics for India, the Philippines, Indonesia, Colombia, Thailand, and Peru only offer a basket category for *all* categories other than 8482.20.00 ''Tapered roller bearings, including cone and tapered roller assemblies.'' In the case of the categories beginning with the four digit 8482 and 8483 heading, similar 'NESOI' or 'Other' subheadings were used in the alternative, though typically not as specific as that of the HTSUS category. However, in the case of the categories beginning with the four digit 8708 heading, WTA export statistics for each of the potential surrogate country candidates could only be found to the broadly defined 8708.99 subheading. Furthermore, WTA data showed that the Philippines did not have any exports for HTS categories 8482.20 (''Tapered roller bearings, including cone and tapered roller assemblies≥) or 8482.91 (''Balls needles and rollers for bearings'').

[9] *See* Surrogate Value Memo.

[10] *See* Surrogate Value Memo.

[11] In accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

over export activities, and is entitled to a separate rate.

a. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

The evidence provided by CPZ supports a preliminary finding of *de jure* absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the company; and (3) there are formal measures by the government decentralizing control of the company. *See* CPZ's Section A Questionnaire Response, dated October 8, 2008.

b. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to de facto government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control over export activities which would preclude the Department from assigning separate rates. We determine for CPZ that the evidence on the record supports a preliminary finding of *de facto* absence of government control based on record statements and supporting documentation showing the following: (1) CPZ sets its own export prices independent of the government and without the approval of a government authority; (2) CPZ retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) CPZ has the authority to negotiate and sign contracts and other agreements; and (4) CPZ has autonomy from the government regarding the selection of management. *See* CPZ's Section A Questionnaire Response, dated October 8, 2008.

The evidence placed on the record of this review by CPZ demonstrates an absence of *de jure* and *de facto* government control with respect to its exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, we are preliminarily granting CPZ a separate rate.

Fair Value Comparisons

To determine whether sales of TRBs to the United States by CPZ were made at less than fair value (''LTFV''), we compared constructed export price (''CEP'') and export price (''EP'') to NV, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice, below, and pursuant to section 771(35) of the Act.

U.S. Price

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act. In accordance with section 772(b) of the Act, we used CEP for CPZ's sales where CPZ first sold subject merchandise to its affiliated company in the United States, which in turn sold subject merchandise to unaffiliated U.S. customers. We calculated CEP for CPZ based on delivered prices to unaffiliated purchasers in the United States. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight from the plant to the port of exportation, international freight, marine insurance, other U.S. transportation, U.S. customs duty, where applicable, U.S. inland freight from port to the warehouse, and U.S. inland freight from the warehouse to the customer. In accordance with section 772(d)(1) of the Act, the Department deducted credit expenses, inventory carrying costs and indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. Finally, we deducted CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act.[12]

In section D of its questionnaire response, dated October 29, 2008, CPZ requested that the Department compare NV to CEP on a Product Code (''PRODCOD'') basis, claiming that calculating dumping margins using Control Number (''CONNUM'') is distortive. Consistent with our determination in the prior review,[13] we have preliminarily determined to use PRODCOD as a basis for comparing NV to CEP.

Additionally, we have preliminarily determined to exclude certain CEP sales transactions CPZ reported in its section C sales data file from CPZ's preliminary margin calculation. Due to the proprietary nature of the information pertaining to these sales transactions, *see* Program Analysis Memo.

Export Price

Because CPZ also sold subject merchandise to unaffiliated purchasers in the United States prior to importation into the United States and use of a CEP methodology was not otherwise appropriate, we used EP for these transactions in accordance with section 772(a) of the Act.[14] We calculated EP based on the delivery method reported to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling charges in the PRC, international freight, and U.S. customs duty, where applicable, pursuant to section 772(c)(2)(A) and (B) of the Act. Where foreign inland freight, foreign brokerage and handling fees, or marine insurance were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate rates from India. *See* ''Factor Valuations'' section below for further discussion of surrogate rates.

[12] *See* the Department's memorandum entitled, ''2007-2008 Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Analysis of the Preliminary Determination Margin Calculation for Peer Bearing Company - Changshan,'' dated June 30, 2009 (''Program Analysis Memo'').

[13] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the Administrative Review*, 74 FR 3987 (January 22, 2009), and accompanying Issues and Decision Memorandum at Comment 3.

[14] *See* Program Analysis Memo.

Normal Value

We compared NV to individual EP and CEP transactions in accordance with section 777A(d)(2) of the Act. Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Under section 773(c)(3) of the Act, FOPs include but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department used FOPs reported by the respondent for materials, energy, labor and packing.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value FOPs, but when a producer sources an input from a market economy and pays for it in market–economy currency, the Department may value the factor using the actual price paid for the input. *See* 19 CFR 351.408(c)(1); *see also Shakeproof Assembly Components Div of Ill v. United States*, 268 F.3d 1376, 1382–1383 (Fed. Cir. 2001) (affirming the Department's use of market–based prices to value certain FOPs).

With regard to both import–based SVs and market–economy import values, it is the Department's consistent practice that, where the facts developed in the United States or third country countervailing duty findings include the existence of subsidies that appear to be used generally (in particular, broadly available, non–industry-specific export subsidies), it is reasonable for the Department to find that it has particular and objective evidence to support a reason to believe or suspect that prices of the inputs from the country granting the subsidies may be subsidized. *See China National Machinery Imp. & Exp. Corp. v. United States*, 293 F. Supp. 2d 1334, 1338–39 (CIT 2003).

In avoiding the use of prices that may be subsidized, the Department does not conduct a formal investigation to ensure that such prices are not subsidized, but rather relies on information that is generally available at the time of its determination. *See* H.R. Rep. 100–576, at 590 (1988), reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24. The Department has reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. Through other proceedings, the Department has learned that these countries maintain broadly available, non–industry-specific export subsidies and, therefore, preliminarily finds it reasonable to infer that all exports to all markets from these countries may be subsidized. *See Brake Rotors From the People's Republic of China: Final Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of the 2005–2006 Administrative Review*, 72 FR 42386 (August 2, 2007), and accompanying Issues and Decision Memorandum at Comment 1. Accordingly, the Department has disregarded prices from Indonesia, South Korea and Thailand in calculating NV.

There are certain sales that were further manufactured or assembled in a third country. Because we preliminarily find that this further manufacture or assembly does not constitute a substantial transformation of the merchandise, the merchandise sold in this manner is subject merchandise. *See* Substantial Transformation Memo.[15] Because CPZ knew at the time of sale that the merchandise was destined for exportation, we have determined normal value for such sales based on the country of origin (*i.e.*, the PRC), pursuant to section 773(a)(3)(A) of the Act. For such merchandise, normal value also includes the cost of further manufacturing or assembly in the third country and the expense of transporting the merchandise from the factory in the PRC to the further manufacturing processing plant in the third country. *See* Program Analysis Memo for further discussion of this issue.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by CPZ for the POR. To calculate NV, the reported per–unit factor quantities were multiplied by publicly available Indian SVs (except as noted below). Unless indicated otherwise, we valued direct materials, energy, and packing materials purchased from NME sources using publicly available import data reported in WTA, utilizing data obtained from the Directorate General of Commercial Intelligence and Statistics, Ministry of Commerce of India. Among the FOPs for which the Department calculated SVs using Indian import statistics are cage steel, steel by–product, cone spacer, coal, anti–rust oil, and all packing materials. For a detailed description of all SVs used for respondents, *see* Surrogate Value Memo.

In selecting the SVs, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate (*i.e.*, where the sales terms for the market–economy inputs were not delivered to the factory). This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401 (Fed. Cir. 1997).

On May 21, 2009, CPZ submitted comments regarding SV selection for bearing quality steel bar, as well as roller quality wire rod. These comments reiterated CPZ's concerns that the SV data submitted by Petitioner for Indian HTS 7228.30.29 and 7228.50.90 are aberrational due to the relatively high value when benchmarked against similar bearing and roller quality steel HTS categories in both the U.S. and other potential surrogate country candidates. On June 9, 2009, Petitioner submitted a response to CPZ's comments. For the preliminary results, we have determined to use contemporaneous Indian import data from HTS category 7228.30.29 and contemporaneous Thai import data from HTS category 7228.50.90.00, to calculate an SV for bearing quality steel bar and roller quality wire rod, respectively. A review of the Indian import statistics for HTS category 7228.50.90 shows wide variations in the average unit values (''AUVs'') between the individual countries listed as exporters in the data. Alternatively, Thai import statistics, under Thai HTS category 7228.50.90.00, do not exhibit the wide level of AUV variance between individual exporters that is seen in the Indian data. Thus, we have determined to use comparable Thai data in the alternative. Using the same method of analysis, Indian import statistics for steel bar appear to be reasonably consistent. As it is our preference to use SVs from within the

[15] *See* The Department's memorandum entitled, ''Tapered Roller Bearings from the People's Republic of China, Country of Origin Decision for Tapered Roller Bearings Finished in a Third Country,'' dated June 30, 2009 (''Substantial Transformation Memo'').

primary surrogate country, we preliminarily determine to value steel bar from Indian HTS category 7228.30.29. For further analysis, *see* Surrogate Value Memo.

The Department has instituted a rebuttable presumption that market economy input prices are the best available information for valuing an input when the total volume of the input purchased from all market economy sources during the POR exceeds 33 percent of the total volume of the input purchased from all sources during the same period. In these cases, unless case–specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted–average market economy purchase price to value the input. Alternatively, when the volume of an NME firm's purchases of an input from market economy suppliers during the period is equal to or below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight average the weighted–average market economy purchase price with an appropriate SV according to their respective shares of the total volume of purchases, unless case–specific facts provide adequate grounds to rebut the presumption. When a firm has made market economy input purchases that may have been dumped or subsidized, are not bona fide, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid market economy purchases meet the 33–percent threshold. *See Antidumping Methodologies: Market Economy Inputs, Expected Non–Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717–19 (October 19, 2006). Also, where the quantity of the input purchased from market–economy suppliers is insignificant, the Department will not rely on the price paid by an NME producer to a market–economy supplier because it cannot have confidence that a company could fulfill all its needs at that price. *Id.* During the POR, CPZ purchased a certain quantity of steel from a market economy supplier in a market economy currency. Accordingly, the Department will weight average the market economy steel price with the appropriate surrogate value. For further analysis, *see* Surrogate Value Memo.

Where the Department could not obtain information contemporaneous with the POR with which to value FOPs, the Department adjusted the SVs using, where appropriate, the Indian Wholesale Price Index (''WPI'') as published by the International Monetary Fund (''IMF'').[16]

We used the truck freight rates published by www.infobanc.com, ''The Great Indian Bazaar, Gateway to Overseas Markets,'' to value truck freight. *See* Surrogate Value Memo. Since the truck freight rates are not contemporaneous with the POR, we deflated the rates using Indian WPI.

We valued inland water freight using price data for barge freight reported in a March 19, 2007, article published in The Hindu Business Line. We inflated the inland water transportation rate using the appropriate WPI inflator. *See* Surrogate Value Memo.

We valued brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by Navneet Publications (India) Ltd. in the 2007–2008 administrative review of certain lined paper products from India, Essar Steel Limited in the 2006–2007 antidumping duty administrative review of hot–rolled carbon steel flat products from India, and Himalya International Ltd. in the 2005–2006 administrative review of certain preserved mushrooms from India. We inflated the brokerage and handling rate using the appropriate WPI inflator. See Surrogate Value Memo.

To value electricity, we used price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication entitled ''Electricity Tariff & Duty and Average Rates of Electricity Supply in India,'' dated July 2006. These electricity rates represent actual country–wide, publicly–available information on tax–exclusive electricity rates charged to industries in India. *See* Surrogate Value Memo.

For direct labor, indirect labor and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression–based wage rate as reported on Import Administration's web site.[17] Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by each respondent. *See* Surrogate Value Memo.

To value factory overhead, selling, general and administrative expenses and profit, the Department used audited financial statements for the years ending on December 31, 2007, for an Indian producer of bearings, SKF India Limited. *See* Surrogate Value Memo for a full discussion of the surrogate financial ratio calculations.

CPZ reported it recovered steel scrap as a by–product of the production of subject merchandise. We found in this administrative review, as confirmed at verification, that CPZ has appropriately reported its by–products and, therefore, we have granted CPZ a by–product offset for the quantities of these reported by–products, valued using Indian WTA data. *See* Surrogate Value Memo.

Currency Conversion

Where appropriate, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following weighted–average dumping margin exists for the period June 1, 2007, through May 31, 2008:

TRBs FROM THE PRC

Exporter	Weighted–Average Margin
Peer Bearing Company Changshan	32.02 Percent

Disclosure and Public Comment

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c). Rebuttals to written comments may be filed no later than five days after the written comments are filed. *See* 19 CFR 351.309(d). Further, parties submitting written comments and rebuttal comments are requested to provide the Department with an

[16] *See* ''International Financial Statistics,'' by the International Monetary Fund (IMF), available at: http://www.imfstatistics.org/imf/output/067EDEA8-7166-48F5-B357-1462F20A0BEF/IFS__Table__38775.0625136.xls. *See also* Surrogate Value Memo for further discussion.

[17] *See* Expected Wages of Selected NME Countries (May 14, 2008) (available at http://ia.ita.doc.gov/wages). The source of these wage rate data on the Import Administration's web site is the Yearbook of Labour Statistics 2005, ILO, (Geneva: 2005), Chapter 5B: Wages in Manufacturing. The years of the reported wage rates range from 2004 to 2005.

additional copy of those comments on diskette.

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Hearing requests should contain the following information: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. *See* 19 CFR 351.310(d).

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For assessment purposes, we calculated exporter/importer- (or customer) -specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty–assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per–unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty–assessment rates calculated on this basis, we will direct CBP to assess the resulting per–unit rate against the entered quantity of the subject merchandise. Where an importer- (or customer) -specific assessment rate is *de minimis (i.e.*, less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties. We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC–wide entity at the PRC–wide rate we determine in the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash–Deposit Requirements

The following cash–deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for CPZ, the cash deposit rate will be that established in the final results of this review, except if the rate is zero or *de minimis* no cash deposit will be required; (2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 92.84 percent; and (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act, and 19 CFR 351.221(b).

Dated: June 30, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–16096 Filed 7–7–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

RIN 0660–ZA29

State Broadband Data and Development Grant Program

AGENCY: The National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of funds availability (Notice) and solicitation of applications.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, publishes this Notice to announce the availability of funds pursuant to the American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111–5 (Feb. 17, 2009), and the Broadband Data Improvement Act (BDIA), Title I of Public Law 110–385, 122 Stat. 4096 (Oct. 10, 2008) and to provide guidelines for the State Broadband Data and Development Grant Program (State Broadband Data Program or Program). The State Broadband Data Program is a competitive, merit-based matching grant program that effects the joint purposes of the Recovery Act and the BDIA by funding projects that collect comprehensive and accurate State-level broadband mapping data, develop State-level broadband maps, aid in the development and maintenance of a national broadband map, and fund statewide initiatives directed at broadband planning.

DATES: Applications will be accepted from July 14, 2009 at 8 a.m. Eastern Time (ET) until August 14, 2009 at 11:59 p.m. ET.

ADDRESSES: All applications must be submitted through the online Grants.gov system no later than 11:59 p.m. ET on August 14, 2009, as more fully described in the section entitled ''Request for Application Package'' below. Failure to properly register and apply for State Broadband Data Program funds by the deadlines may result in forfeiture of the grant opportunity. Applications are accepted until the deadline and processed as received. Applications submitted by hand delivery, mail, email or facsimile will not be accepted.

FOR FURTHER INFORMATION CONTACT: For general inquiries regarding the State Broadband Data Program, applicants may contact Edward ''Smitty'' Smith, Program Director, State Broadband Data and Development Grant Program,

National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4898, Washington, DC 20230; by telephone at 202–482–4949 or via electronic mail at *broadbandmapping@ntia.doc.gov.* Information about the State Broadband Data Program can also be obtained electronically via the Internet at *http://www.ntia.doc.gov/broadbandgrants.*

SUPPLEMENTARY INFORMATION: Catalog of Federal Domestic Assistance (CFDA) Number: 11.558.

Additional Items in **SUPPLEMENTARY INFORMATION:**

I. *Overview:* Describes the statutory origin of the broadband mapping requirement under the Recovery Act, the applicability of the BDIA, the structure of the Program and the public comment process.

II. *Funding Opportunity Description:* Provides a more thorough description of the Program, including a description of mapping and planning priorities, and the application review process.

III. *Definitions:* Sets forth the key terms and other terms used in this Notice.

IV. *Award Information:* Describes funding availability and other award information.

V. *Eligibility Information:* Discusses eligibility criteria, including the 20 percent match, confidentiality requirements, and funding restrictions.

VI. *Application and Submission Information:* Provides information about how to apply, application materials, and the application process.

VII. *Application Review Information:* Establishes the scoring criteria for evaluating applications.

VIII. *Anticipated Award Dates:* Identifies the initial award announcement and award dates for Program awards.

IX. *Award Administration Information:* Provides award notice information, administrative requirements, terms and conditions, and other reporting requirements for award recipients.

X. *Other Information:* Sets forth guidance on funding, compliance with various laws, regulations and other such requirements.

I. Overview

A. *The Recovery Act:* Section 6001(l) of the Recovery Act requires the Assistant Secretary to develop and maintain a comprehensive, interactive, and searchable nationwide inventory map of existing broadband service capability and availability in the United States that depicts the geographic extent to which broadband service capability is deployed and available from a commercial or public provider throughout each State.[1] The Recovery Act requires the Assistant Secretary to make the national broadband map accessible by the public on an NTIA Web site no later than February 17, 2011.[2] The Recovery Act authorizes NTIA to expend up to $350 million pursuant to the BDIA and for the purposes of developing and maintaining a broadband inventory map.[3] Implementation of the BDIA is useful to fulfill Congress' intent to develop a national broadband map as expressed and funded under the Recovery Act.

B. *The BDIA:* The BDIA is intended to improve data on the deployment and adoption of broadband service to assist in the extension of broadband technology across all regions of the United States.[4] Section 106 of the BDIA directs the Secretary of Commerce to establish the State Broadband Data Program and to award grants to eligible entities to develop and implement statewide initiatives to identify and track the adoption and availability of broadband services within each State.[5] In effecting this purpose, the BDIA provides several eligible uses for grant funds, including uses related to the gathering of broadband-related data at the State level and the development of statewide broadband maps.[6]

C. *The State Broadband Data Program:* In keeping with the Recovery Act's direction that NTIA develop and maintain a comprehensive and interactive national broadband map and the requirements of the BDIA, NTIA has established this grant program. Awardees under this Program will receive grants to fund their collection of broadband-related data as well as funding for planning programs at the State level. Awardees will use the broadband-related data that they collect to develop statewide broadband maps, which will be linked to a Department of Commerce Web page. In addition, the awardees will submit all of their collected data to NTIA for use by NTIA and the Federal Communications Commission (FCC) in developing and maintaining the national broadband map, which will be displayed on an NTIA Web page before February 17, 2011.

NTIA's decisions are based on the statutory requirements of the Recovery Act and are informed by NTIA's own expertise, the expertise of other Federal agencies, including the FCC, and public comment.

D. *Public Comment:* On March 10, 2009, NTIA, the FCC, and the U.S. Department of Agriculture's Rural Utilities Service (RUS) cosponsored a public meeting to initiate public outreach about the current availability of broadband service in the United States and ways in which the availability of broadband service could be expanded.[7] The March 10th meeting was followed by the release of a Request for Information (RFI) and six days of additional public meetings and field hearings during March.[8] The RFI requested the submission of information on a broad range of topics including topics related to broadband mapping, the Recovery Act and the BDIA. The meetings and hearings included nearly 120 panelists with representatives from consumer and public interest groups, State and local governments, tribal governments, minority and vulnerable populations, industry, academia and other institutions.

In response to the RFI and the public meetings, NTIA received over 1,000 comments from institutions and individuals on the broadband initiatives funded by the Recovery Act.[9] With regard to the issues surrounding the State Broadband Data Program and the national broadband map that NTIA is

[1] Recovery Act section 6001(l), 123 Stat. at 516. See Section IV for the definition of ''State'' and other relevant definitions.

[2] *Id.*

[3] Recovery Act, Title II, Div. A, 123 Stat. at 123 (to be codified at 47 U.S.C. 1301).

[4] BDIA § 102, 122 Stat. at 4096.

[5] BDIA § 106(b), 122 Stat. at 4099. The Secretary delegated his authority to meet the obligations of Section 106 of the BDIA to the Assistant Secretary for Communications and Information (Assistant Secretary) on April 9, 2009.

[6] The BDIA authorizes the Secretary to make grants to eligible entities for the following eligible uses: (1) To develop and provide a baseline assessment of broadband deployment in each State; (2) to identify and track the areas with low levels of deployment, the rate at which residential and business users adopt broadband service and other related information technology services, and possible suppliers of such services; (3) to identify barriers to the adoption of broadband service and information technology services; (4) to identify the available speeds for broadband connection; (5) to create and facilitate by county or designated region in a State, local technology planning teams; (6) to collaborate with broadband service providers and information technology companies to encourage deployment and use; (7) to establish computer ownership and Internet access programs in unserved and areas with lower than average penetration on a national basis; (8) to collect and analyze detailed market data concerning use and demand for broadband service; (9) to facilitate information exchange regarding use and demand for broadband services between public and private sector users; and (10) to create within each State a geographic inventory map of broadband service. BDIA § 106(e), 122 Stat. at 4100–4101.

[7] *See* Notice: American Recovery and Reinvestment Act of 2009 Broadband Initiatives, 74 FR 8914 (Feb. 27, 2009).

[8] *See* Notice: American Recovery and Reinvestment Act of 2009 Broadband Initiatives, 74 FR 10716 (March 12, 2009). Agendas, transcripts and presentations from each meeting are available on NTIA's Web site at *http://www.ntia.doc.gov/broadbandgrants/meetings.html.*

[9] Agendas, transcripts, and presentations from each meeting are available on NTIA's Web site at *http://www.ntia.doc.gov/broadbandgrants/meetings.html.* All public comments in Docket No. 090309298–9299–01 are on file with NTIA and may be viewed on NTIA's Web site at *http://www.ntia.doc.gov/broadbandgrants/comments.cfm.*

required to prepare under Section 6001(l) of the Recovery Act, NTIA received more than 200 comments, many of which played a role in formulating the structure of this Program. For further discussion and explanation of the policy decisions involved in establishing this program, see the attached *Policy Justification Appendix.*

II. Funding Opportunity Description

A. *Program Description:* The State Broadband Data Program is a competitive, merit-based matching grant program that implements the joint purposes of the Recovery Act and the BDIA through the award of grants. This Program is designed to fund projects that gather comprehensive and accurate State-level broadband mapping data, develop State-level broadband maps, aid in the development and maintenance of a national broadband map, and fund statewide initiatives for broadband planning.

While the BDIA mandates that each State may have only a single eligible entity, each applicant will be carefully evaluated against a program standard. Any applicant that fails to meet the program standard will not receive grant funding; therefore, the efficient fulfillment of the goals of the Recovery Act and the BDIA will be advanced by the submission of a qualifying application from each State highly responsive to the review criteria contained in this Notice. In the event that a State fails to produce a grant awardee, NTIA reserves the right to perform the necessary broadband data collection.

1. *Use of Collected Broadband Data by Awardees.* Awardees may use the data collected under this Program for any lawful use consistent with the requirements of this Program, including the confidentiality restrictions contained herein, and existing agreements between the awardee, the State, and broadband service providers. It is expected, however, that, in addition to providing all collected data to NTIA, applicants will use the data to develop and maintain a statewide broadband map that will be separate and distinct from the national broadband map and will be tailored to suit the needs of the particular State. Though it will be separate and distinct from the national broadband map, applicants must provide NTIA with a hypertext link to the State maps for display on a Web page on the Department of Commerce Web site.

2. *Use of Collected Broadband Data by NTIA and the FCC.* The data collected under this Program will be used for public purposes and also utilized by governmental entities. For example, because of its value in identifying appropriate areas for broadband investment and economic stimulus, the collected data will inform NTIA's grant-making decisions under the Broadband Technology Opportunities Program (BTOP). The national broadband map that will be developed and maintained using these and other data will publicly display the following information about broadband service available from a public or private provider:

(a) Geographic areas in which broadband service is available;

(b) The technologies used to provide broadband service in such areas;

(c) The spectrum used for the provision of wireless broadband service in such areas;

(d) The speeds at which broadband service is available in such areas; and

(e) Broadband service availability at public schools, libraries, hospitals, colleges and universities and all public buildings owned or leased by agencies or instrumentalities of the States or municipalities or other subdivisions of the States and their respective agencies or instrumentalities.

The national map will also be searchable by address. To the greatest extent possible, at every address, the type and speed of broadband service will be provided. For providers of wireless broadband service, the spectrum used for the provision of service will be provided. If the applicable broadband service provider so chooses, the provider's identity will also be available, otherwise the map will simply display that an anonymous provider utilizing a particular type of technology is providing service to a location. Furthermore, to the extent possible, the service areas of individual providers will be aggregated with other providers of the same technology type.

Though collected under this Program, data concerning the Average Revenue Per User (ARPU) and data regarding the type, technical specification, or location of infrastructure owned, leased, or used by a broadband service provider will not be displayed on the public national broadband map.[10] The above paragraphs notwithstanding, if provider consent is granted, NTIA may display the above provider-specific information on the national broadband map.

In addition to the above broadband-related information, the national broadband map may display a wide range of additional, economic, and demographic data derived from other sources. Such data, however, are not the subject of this Notice.

B. *Program Priorities:*

1. *Broadband Mapping.* With respect to this Program, NTIA's highest priority is the development and maintenance of a national broadband map. Therefore, NTIA intends to fund high-quality projects that are designed to gather data at the address-level on broadband availability, technology, speed, infrastructure, ARPU, and, in the case of wireless broadband, the spectrum used, across the project areas. NTIA has determined that the BDIA's eligible uses regarding State-specific data collection and geographic inventory broadband mapping activities are encompassed within the broadband mapping grant guidelines described herein. Successful projects must propose: (a) To provide comprehensive and verifiable data meeting the Program standards as published in this Notice, such data will be accessible and clearly presented to NTIA, the public, and State and local governments without unduly compromising data or the protection of Confidential Information as defined in this notice; (b) a workable and sustainable framework for repeated updating of data; (c) a plan for collaboration with State-level agencies, local authorities, and other constituencies, as well as a proposal for planning projects designed to identify and address broadband challenges in the State; (d) feasible projects as demonstrated by a reasonable and cost-efficient budget, and a showing of applicant capacity, knowledge and experience; and (e) a timeline for expedient data delivery.

2. *Broadband Planning.* Only applications that meet the broadband mapping purposes set forth in the above paragraph will be considered for planning funding, and mapping proposals do not need to include a planning component. However, applicants may propose projects or award uses that relate to an enumerated BDIA purpose described in Section I of this Notice that addresses a need in their State. Any proposed use of funds that is not directed towards the collection of data for, or the development and maintenance of, the State or national broadband map will be considered a planning use. There is a presumption that the BDIA purposes involving the identification of barriers to the adoption of broadband service and information technology services, the creation and facilitation of local technology planning teams, and the establishment of computer ownership

[10] However, NTIA is considering methods for displaying some pricing data that will be collected through other avenues.

and Internet access programs are not mapping-related and therefore are only eligible for broadband planning funding. However, applicants may demonstrate in their applications how a use under such categories will inform the collection of broadband data or development of State and national broadband maps. Broadband planning funds will be limited, and broadband planning-related uses under any grant application budget may not exceed $500,000.

C. *Review and Selection Processes:*

The review process involves the three stages outlined below. NTIA anticipates that the processing and selection of applications for funding will require one (1) month from the date of submission.

1. *Eligibility.* Upon receipt, NTIA will screen applications for factors determining eligibility as described in the section entitled ''Eligibility Information'' below. In the case that NTIA determines that an application fails to address adequately any eligibility criteria before the application deadline, NTIA may alert the applicant of such deficiency and the applicant may revise such application before the application deadline to comply with Program requirements. However, NTIA has no affirmative obligation to notify applicants of a deficient application and will not be held responsible for any deficiencies that are not remedied in a timely manner.

2. *Technical Review.* Each eligible application will be reviewed by a panel of at least three peer/expert reviewers who have demonstrated expertise in both the programmatic and technological aspects of the Program. The peer/expert review panel members will individually evaluate applications according to the review criteria provided in Section VII of this Notice and provide ratings to the Program staff. Each peer/expert reviewer will be required to sign and submit a nondisclosure and confidentiality form to prevent the dissemination of Confidential Information, and to prevent financial and other conflicts of interest.

3. *Programmatic Review and Revision Process.* Following the Technical Review, each eligible application will be reviewed by Program staff for policy determinations and conformity with programmatic goals. Program staff will analyze applications considered for award to assess: (a) Whether a proposed project meets the Program's funding constraints; (b) the eligibility of costs and matching funds included in an application's budget; and (c) the extent to which an application complements or duplicates projects previously funded or under consideration by NTIA or other Federal programs. Following this programmatic review, Program staff may contact an eligible applicant to discuss any recommended adjustments or revisions to their applications necessary to better meet Program goals. Revisions are intended to resolve any differences that exist between the applicant's original request and what the State Broadband Data Program proposes to fund and, if necessary, to clarify items in the application. Staff may also request additional corroborating documentation from applicants. These documents will be reviewed by Program staff with the support of external engineering, design, information technology, geographic information systems, broadband, and other subject-matter experts to evaluate the consistency of the applications with the supporting documents and ensure that applications merit State Broadband Data Program awards.

Upon the conclusion of the programmatic review and revision process, each application will continue through the selection process. The Program Director will prepare and present a slate of recommended grant awards to the Associate Administrator for review and approval. The Program Director's recommendations and the Associate Administrator's review and approval of those recommendations will take into account the selection factors listed below.

Upon approval by the Associate Administrator, the Program Director's recommendations will be presented to the Selecting Official, the Assistant Secretary. The Assistant Secretary selects the applications for grant award, taking into consideration the Program Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the selection factors described below and the Program's stated purposes as set forth in the section entitled ''Program Description.''

The Selecting Official will issue awards after considering the following selection factors:

(a) The evaluations of the peer/expert reviewers;

(b) The analysis of Program staff;

(c) The degree to which the proposed grants meet the Program's purpose as described in this Notice;

(d) Avoidance of redundancy and conflicts with the initiatives of other Federal agencies; and

(e) The availability of funds.

III. Definitions

For the purposes of this Program, NTIA has adopted the following definitions for the State Broadband Data Program, many of which were developed for BTOP, pursuant to Recovery Act Section 6001(a). Applicants for these grants should refer to the following definitions when completing their applications:

Applicant. An entity requesting approval for an award under this Notice.

ARPU. Average Revenue Per User. Average Revenue Per User for this Program is as defined in the *Technical Appendix.*

Assistant Secretary. The Assistant Secretary for Communications and Information, National Telecommunications and Information Administration, Department of Commerce, or the Assistant Secretary's designee.

Associate Administrator. The Associate Administrator of the National Telecommunications and Information Administration, Department of Commerce/the Director of the Office of Telecommunications and Information Applications, or the Associate Administrator's designee.

Available. Broadband service is ''available'' to an end user at an address if a broadband service provider does, or could, within a typical service interval (7 to 10 business days) without an extraordinary commitment of resources, provision two-way data transmission to and from the Internet with advertised speeds of at least 768 kilobits per second (kbps) downstream and at least 200 kbps upstream to the end user at the address.

Award. A grant made under this Notice by NTIA.

Awardee. A recipient of an Award under this Notice; a grantee.

Broadband. Data transmission technology that provides two-way data transmission to and from the Internet with advertised speeds of at least 768 kilobits per second (kbps) downstream and at least 200 kbps upstream to end users, or providing sufficient capacity in a middle mile project to support the provision of broadband service to end users within the project area.

Broadband Service. The provision of broadband on either a commercial or non-commercial basis.

BTOP. The Broadband Technology Opportunities Program, administered by NTIA, under Section 6001 of the Recovery Act.

Community Anchor Institutions. Schools, libraries, medical and healthcare providers, public safety entities, community colleges and other institutions of higher education, and other community support organizations and entities.

Confidential Information. Any information, including trade secrets, or commercial or financial information, submitted under this Program that: (1) Identifies the type and technical specification of infrastructure owned, leased, or used by a specific broadband service provider; (2) identifies the average revenue per user (ARPU) for a specific broadband service provider; or (3) explicitly identifies a broadband service provider in relation to its specific Service Area or at a specific Service Location. For example, a broadband service provider's specific service ''footprint'', as identified with such provider, will be considered Confidential Information for the purposes of this Program and will either (a) be aggregated with other available providers of the same technology type before being published in the national broadband map, in which case the map would only display the aggregated list of providers that have consented to have their names displayed for such service area; or (b) in the absence of other providers of the same technology type with which a provider's specific service ''footprint'' can be aggregated, be displayed without providing the provider's identity, unless the provider gives its consent. NTIA and the FCC may otherwise aggregate, combine or mask broadband service provider data, and take other steps so as to make such data suitable for public release.

Notwithstanding the foregoing, Confidential Information, as defined herein and as provided as part of a project funded under this Program, will not be made publicly available, pursuant to the limitations set forth in the BDIA, except as required by applicable law or judicial or administrative action or proceeding, including the Freedom of Information Act requirements.[11]

Data. Statistics, figures, descriptions, maps, geographic coordinates, or other such information relating to the provision of broadband services.

End User. A residential or business party, institution or State or local government entity, including a Community Anchor Institution, that may use broadband service for its own purposes and that does not resell such service to other entities or incorporate such service into retail Internet-access services. Internet Service Providers (ISPs) are not ''end users'' for this purpose.

In-Kind Contribution. Qualifying non-cash donations, including third-party in-kind contributions, of property, goods or services, which benefit a Federally assisted project, and which may count toward satisfying the non-Federal matching requirement. See the section entitled ''Eligibility Information'' below for a full discussion of the Program's treatment of in-kind contributions and the Federal structure for determining when a contribution qualifies.

Pre-Award Costs. Reasonable costs incurred after the enactment of the Recovery Act (February 17, 2009) but prior to the effective date of the award directly pursuant to and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award, and only with the written approval of NTIA.

Recovery Act. The American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115 (2009).

Rural Area. Any area, as confirmed by the latest decennial census of the Bureau of the Census, which is not located within: (i) A city, town, or incorporated area that has a population of greater than 20,000 inhabitants; or (ii) an urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants. For purposes of the definition of rural area, an urbanized area means a densely populated territory as defined in the latest decennial census of the U.S. Census Bureau.

Secretary. The Secretary of Commerce.

Service Area. The entire area within which an existing service provider offers broadband service.

Service Location. The specific geographic point or location at which a service provider offers broadband service, such as a specific residence or business.

State. A State, the District of Columbia, or a territory or possession of the United States. For the purposes of the designation of an eligible entity, the term ''State'' will be interpreted to mean the Governor or in the absence of a designation by the Governor, the Legislature, officer, or executive agency within the State that the Governor or State Constitution authorizes to take binding action for the State. In the case State, the District of Columbia, or a territory or possession of the United States, the terms Governor, Legislature or State Constitution shall mean their respective functional equivalents.

Substantially Complete Data Set. A data set is substantially complete when it contains data on broadband services provided by (a) 70 percent of broadband service providers in a State; (b) to 80 percent of households in a State; (c) to 90 percent of households in rural areas of the State; and (d) to 95 percent of public Community Anchor Institutions.

Underserved Area. An area composed of one or more contiguous census blocks meeting certain criteria that measure the availability of broadband service and the level of advertised broadband speeds.[12] Specifically, an area is underserved if at least one of the following factors is met, though the presumption will be that more than one factor is present: (i) No more than 50 percent of households in the service area have access to facilities-based terrestrial broadband service at greater than the minimum broadband transmission speed (set forth in the definition of broadband above); (ii) no fixed or mobile broadband service provider advertises broadband transmission speeds of at least three megabits per second (''mbps'') downstream in the area; or (iii) the rate of broadband subscribership for the area is 40 percent of households or less.[13] A household has access to broadband service if the household can readily subscribe to that service upon request.

Unserved Area. An area composed of one or more contiguous census blocks where at least 90 percent of households in the service area lack access to facilities-based terrestrial broadband service, either fixed or mobile, at the minimum broadband transmission speed (set forth in the definition of broadband above). A household has access to broadband service if the household can readily subscribe to that service upon request.

IV. Award Information

A. *Funding Availability and Estimated Funding:* The Recovery Act authorizes NTIA to expend up to $350 million for the purposes of developing and maintaining a broadband inventory map and pursuant to the BDIA.[14] NTIA expects grant awards to range between $1.9 million and $3.8 million per State for the mapping portion of each project,

[11] BDIA § 106(h), 122 Stat. at 4101.

[12] Census blocks are the smallest geographic areas for which the U.S. Bureau of the Census collects and tabulates decennial census data. Census blocks are formed by streets, roads, railroads, streams and other bodies of water, other visible physical and cultural features, and the legal boundaries shown on Census Bureau maps. Census data at this level serve as a valuable source for small-area geographic studies. See the Census Bureau's Web site at *http://www.census.gov* for more detailed information on its data gathering methodology.

[13] These criteria conform to the two distinct components of the BIP and BTOP categories of eligible projects—Last Mile and Middle Mile.

[14] Recovery Act, Title II, Div. A. 123 Stat. at 128.

and up to $500,000 for the planning portion of each project. The exact size of any award will depend on the specifics of each project, the quality of each project as determined in NTIA's review, as well as demographic and geographic features unique to each State. Project budgets will be carefully reviewed to ensure that they are appropriate given the specifics of the project and the project State. Fiscally irresponsible budgets will be detrimental to an application. Any funds not expended under this Program will be reallocated to BTOP purposes.

Publication of this Notice does not obligate NTIA to award any specific project or obligate all or any parts of any available funds.

B. *Award Period:* All awards under this Program must be made no later than September 30, 2010. The period of performance will be five (5) years from the date of award.

C. *Type of Funding Instrument:* Grant.

V. Eligibility Information

A. *Eligible Applicants:* Pursuant to the BDIA, eligible recipients of State Broadband Data Program grants are:

(a) Entities that are either (i) an agency or instrumentality of a State, or a municipality or other subdivision (or agency or instrumentality of a municipality or other subdivision) of a State; (ii) a nonprofit organization that is described in Section 501(c)(3) of the Internal Revenue Code of 1986 and that is exempt from taxation under Section 501(a) of such Code; or (iii) an independent agency or commission in which an office of a State is a member on behalf of the State; and

(b) The single eligible entity in the State that has been designated by the State to receive a grant under this section.[15]

Matching Funds and Cost Sharing Requirements: Awardees under this Program will be required to provide and document at least 20 percent non-Federal matching funds toward the total eligible project cost.[16] Applicants must document their capacity to provide matching funds. Matching funds may be in the form of either cash or in-kind contributions consistent with 15 CFR 14.23, 24.3, and 24.24. Certain pre-award costs may be credited towards an applicant's matching funds requirements. As provided in 48 U.S.C. 1469a, the requirement for local matching funds under $200,000 (including in-kind contributions) is waived for the Territorial governments in Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. Grant funds under this Program will be released in direct proportion to the documented expenditure of matching funds.

In-Kind Contributions. In-kind contributions, which include third-party in-kind contributions, are non-cash donations of property, goods or services, which benefit a Federally assisted project, and which may count toward satisfying the non-Federal matching requirement when they meet certain criteria.[17] The rules governing allowable in-kind contributions are very detailed and encompass a wide range of properties and services. NTIA encourages grant applicants to consider thoroughly potential sources of in-kind contributions which, depending on the particular property or service and the cost principles applicable to the applicants' organization type, could include: employee or volunteer services; equipment; supplies; indirect costs;[18] computer hardware and software; use of facilities; expenditures for existing programs presented as part of the project proposal under this Program. In addition, applicants may propose as in-kind contributions the ascertainable fair market value of data previously collected and related to the BDIA-eligible uses under this Program. If data previously collected is to be claimed as an in-kind contribution, applicants must provide a basis for estimating fair market value, including but not limited to the documented costs incurred for data collection. NTIA reserves the right at its discretion to provide in-kind credit for an amount different than that claimed by the applicant.

B. *Confidentiality Requirements:* The BDIA requires that to be eligible to receive a grant under this Program, entities must agree to treat any matter that is a trade secret, commercial or financial information, or privileged or confidential, as a record not subject to public disclosure except as otherwise mutually agreed to by the broadband service provider and the entity.[19] As a condition of grant funding under this Program, awardees may not agree to a more restrictive definition of Confidential Information than the definition adopted by this Program.

Nondisclosure Agreements. As a measure to protect the confidential or proprietary nature of the information received from broadband service providers and other organizations during the data collection phase, awardees may execute nondisclosure agreements (consistent with applicable law) that require the awardees to treat any matter that is a trade secret, commercial or financial information, or privileged or confidential, as a record not subject to public disclosure except where mutually agreed upon by the information provider and the awardee, *provided, however,* that any such nondisclosure restriction (a) will not restrict the providing of all data collected under this Program to NTIA, nor (b) restrict NTIA's use of such data as contemplated under this Notice (including sharing such data with the FCC or other Federal agencies).

To the extent required by law, NTIA agrees that it will not publicly disclose any Confidential Information, as defined herein, provided to it by an applicant or awardee under this Program. Providing Confidential Information to the FCC, or other Federal agencies as necessary, shall not constitute public disclosure. In any disclosure to the FCC or other Federal agencies, NTIA will request that such agency make no further disclosure of the Confidential Information except as required by applicable law or judicial or administrative action or proceeding.[20]

C. *Information Provided:* In order to be eligible for a grant under this Program, each applicant must agree to provide NTIA with broadband data, of

[15] BDIA § 106(i)(2)(B), 122 Stat. at 4102.

[16] BDIA § 106(c)(2), 122 Stat. at 4099. Generally, Federal funds may not be used as matching funds except as provided by Federal statute. *See* ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-profit, and Commercial Organizations,'' 15 CFR 14.23(a)(5); *see also* ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' 15 CFR 24.24(b)(1).

[17] 15 CFR 14.23, 24.3, 24.22, 24.24. *See also* OMB Circular A–87, ''Cost Principles for State, Local and Indian Tribal Governments'' (Rev. May 10, 2004), OMB Circular A–122, Cost Principles for Non-Profit Organizations (Rev. May 10, 2004), and 48 CFR pt. 31, ''Contract Cost Principles and Procedures.''

[18] Reasonable indirect costs may be included as part of cost sharing or matching only with the prior approval of NTIA. The amount of indirect charges allocated to the budget is based on an applicant's indirect cost rate. An applicant may already have an indirect cost rate negotiated with a Federal agency, in which case, that rate may be applied to the applicant's grant if it is current. If it is not current, the applicant will need to update it. If an applicant does not have a negotiated rate, but would like to include indirect costs, the applicant will need to establish a rate with the Department of Commerce.

[19] BDIA §§ 106(c)(3) and 106(h)(2), 122 Stat. at 4101–2 (This requirement applies only to information submitted by the FCC or a broadband provider to carry out the provisions of the BDIA and shall not otherwise limit or affect the rules governing public disclosure of information collected by any Federal or State entity under any other Federal or State law or regulation).

[20] The provisions of this section notwithstanding, all information submitted by an applicant or awardee to NTIA for the purposes of this Program will be subject to Freedom of Information Act requirements under 5 U.S.C. 552.

the type and in the format provided in the *Technical Appendix,* from all commercial or public providers of broadband service in their respective States, including, but not limited to, commercial or public providers of broadband service to Indian tribes (as defined in Section 4 of the Indian Self-Determination and Education Assistance Act [21]), Native Hawaiian organizations, Community Anchor Institutions or agencies or instrumentalities of the States, or municipalities or other subdivisions of the States and their respective agencies or instrumentalities.

In no case, however, are applicants required to propose collecting data on broadband service provided by the Federal government or any agencies or instrumentalities of the Federal government or broadband service provided on property owned or leased by the Federal government or any agencies, or instrumentalities of the Federal government.

Failure to agree to collect the required data will render an applicant ineligible for funding under this Program.

D. *Participation Limit:* This is a new program and no activities have been funded under it as of the date of this Notice. BDIA stipulates that no State-designated entity may receive a grant under this Program to fund activities described above if that entity, or another entity designated by that State, obtained prior grant awards under this section to fund the same activities in that State in each of the previous four (4) consecutive years.[22] Because the Recovery Act requires the obligation of all funds by September 30, 2010, NTIA does not anticipate any situations where a violation of this provision could occur.

E. *Funding Restrictions:*

1. *Eligible Costs.* Grant funds must be used only to pay for eligible costs. Under this Notice, eligible costs are governed by the Federal cost principles identified in the applicable OMB circulars and in the Program's authorizing legislation.[23] In addition, costs must be reasonable, allocable, necessary to the project, and comply with the funding statute requirements. Neither mapping nor planning projects may include any construction costs.

2. *Recovery Act-Specific Restrictions.* The Recovery Act imposes an additional limitation on the use of funds expended or obligated from appropriations made pursuant to its provisions. Specifically, for purposes of this Notice, none of the funds appropriated or otherwise made available under the Recovery Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.[24]

VI. Application and Submission Information

A. *Address To Request Application Package:* To ensure a successful submission, applicants must apply for State Broadband Data Program funding through the online Grants.gov system through the Authorized Organization Representative (AOR). Grants.gov, an e-Government initiative, is a ''storefront'' that provides a unified process for all seekers of Federal grants to find funding opportunities and apply for funding. If applicants have previously used Grants.gov, the existing account may be used for the State Broadband Data Program. States that have not previously submitted an application through Grants.gov are strongly encouraged to initiate the registration process as soon as possible. Instructions are available on the Grants.gov Web site (*http://www.grants.gov*). Application forms and instructions are also available at Grants.gov. To access these materials, go to *http://www.grants.gov,* select ''Apply for Grants,'' and then select ''Download Application Package.'' Enter the CFDA and/or the funding opportunity number located on the cover of this announcement. Select ''Download Application Package,'' and then follow the prompts. To download the instructions, go to ''Download Application Package'' and select ''Instructions.'' Applicants should visit Grants.gov prior to filing their applications so that they fully understand the process and requirements. Failure to properly register and apply for State Broadband Data Program funds by the deadlines may result in forfeiture of the grant opportunity. Applications are accepted until the deadline and processed as received. Applications submitted by hand delivery, mail, e-mail or facsimile will not be accepted.

B. *Registration:*

1. *DUNS Number.*—All applicants must supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number. Applicants can receive a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711 or via the Internet at *http://www.dunandbradstreet.com.*

2. *Central Contractor Registration (CCR).* All applicants must provide a CCR (CAGE) number evidencing current registration in the Central Contractor Registration (CCR) database. If the applicant does not have a current CCR (CAGE) number, the applicant must register in the CCR system available at: *http://www.ccr.gov/StartRegistration.aspx.*

C. *Content and Form of Application Submitted Through Grants.gov:* The following is a list of required application forms:

- Standard Form 424, Program Abstract/Program Narrative;
- Standard Form 424, Application for Federal Assistance;
- Standard Form 424A, Budget Information—Non-Construction Programs;
- Standard Form 424B, Assurances—Non-Construction Programs;
- Standard Form LLL, Disclosure of Lobbying Activities;
- CD–511 Certification Regarding Lobbying; and
- Letter of State Designation.

Program Narrative. The applicant must complete a Program Narrative including responses to the five review criteria listed in Section VII (A) and listed below.

The Narrative should begin with an introduction that serves as an Executive Summary of the project. It should be a brief, straightforward statement of what the application proposes to accomplish.

The Narrative should also include a description of all unserved and underserved areas in their State as defined herein, to the extent they are known, and a prioritization for the allocation of grant funds within that

[21] 25 U.S.C. 450(b).

[22] BDIA § 106(f), 122 Stat. at 4101.

[23] The government has established a set of Federal principles for determining eligible or allowable costs. Allowability of costs will be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or Federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for State, Local and Indian Tribal Governments.'' The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.'' The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.'' The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR pt. 74, ''Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals.'' The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR pt. 31. *See* 15 CFR 14.27, 24.22 (governing the Department of Commerce's implementation of OMB requirements).

[24] Recovery Act § 1604, 123 Stat. at 303.

State for projects in or affecting the State.[25]

The Narrative should then address the five review criteria in separate sections of the Narrative. Applicants should address the five criteria in the following order and each section should be labeled with the name of the criterion being discussed to help the reviewers who evaluate the application. Any exhibits, maps, timelines, or spreadsheets should be placed within the appropriate section of the narrative.

1. *Data:*

(a) *Data Gathering.* Applicants must provide a comprehensive description of how the applicant plans to obtain all data required under the *Technical Appendix* from commercial or public providers, as applicable (such description should identify general or specific methods, or legal authorities upon which applicants will rely to obtain the required data). Applicants should refer to specific data elements in the Technical Appendix when appropriate as part of their narrative.

(b) *Accuracy and Verification.* Applicants must provide a description of what methods the applicant intends to employ to verify data accuracy.

(c) *Accessibility.* Applicants must provide a description of how the State's broadband data will be publicly accessible, clearly presented, and easily understood by the public, government and the research community. Applicants must also describe the applicant's proposed State-level map.

(d) *Security and Confidentiality.* Applicants must provide a description of what methods the applicant intends to employ to ensure both transparency of process and protection of collected data, including Confidential Information as defined herein.

2. *Project Feasibility:*

(a) *Applicant Capabilities.* Applicants must provide a detailed budget narrative providing detailed description of proposed project costs (including a detailed description of any proposed expenditures for the purchase of computer hardware, software, other information systems or the compensation of information technology personnel that will be used to collect and store all required data) and describing any proposed sources of in-kind match. The budget narrative must provide sufficient explanation of each budget category in order to establish the need for the funds in each category, and the basis for figures used. The budget narrative must be accompanied by a spreadsheet supporting how the budget request was calculated.

Applicants that include requests for Broadband Planning activities within their application must provide a separate budget narrative and spreadsheet for the planning portion of their request.

All applicants must demonstrate that they have the ability to secure the funding necessary to meet the required 20 percent non-Federal matching contribution.

(b) *Applicant Capacity, Knowledge and Experience.* Applicants must provide a description of applicant qualifications, including knowledge and experience of the applicant and the associated project personnel with conducting projects of similar scope and scale, including dealing with broadband or telecommunications technology, overseeing the projects that collect broadband or telecommunications-related data, or Geographic Information System (GIS) data.

3. *Expedient Data Delivery:*

Applicants must provide a timeline for major project goals, including anticipated dates of data delivery. This timeline should be ambitious and designed to facilitate the delivery of all data required by the *Technical Appendix.* NTIA will have a preference for the provision of a substantially complete set of availability data by November 1, 2009. Applicants that cannot provide a substantially complete set of availability data by November 1, 2009, may propose to provide an alternative data set by that date. Applicants must demonstrate that they have the ability to complete the project requirements within the proposed timeline, including the requirements to provide a substantially complete set of all broadband mapping data on or before February 1, 2010 and to complete such data collection by March 1, 2010. All data provided in the first collection should be accurate as of June 30, 2009.

4. *Process for Repeated Data Updating:*

Applicants must provide a description of what methods the applicant intends to use to provide for repeated updating of data on at least a semi-annual basis continuing for at least five (5) years after the date of the initial collection.[26]

5. *Planning and Collaboration:*

Applicants must provide a description of how the applicant intends to collaborate with State-level agencies and local authorities in carrying out the mapping effort. Applicants that include a planning component must provide a description and justification on how well the proposed planning process will address one or more of the projects identified earlier in the BDIA.

The narrative should be no longer than forty (40) pages in length, single spaced in 12 point Times New Roman font (or equivalent).

Letter of State Designation. This letter, signed by the Governor or equivalent chief executive of the State, or his duly authorized designee, affirms that the applicant is the single eligible entity in the State that has been designated by the State to receive a grant under this Program.

D. *Submission Dates and Times:* All applications must be submitted between July 14, 2009 at 8 a.m. ET and 11:59 p.m. ET on August 14, 2009. The electronic application system at Grants.gov will provide a date and time stamped confirmation number that will serve as proof of submission.

E. *Material Representations:* The application, including certifications, and all forms submitted as part of the application will be treated as a material representation of fact upon which NTIA will rely in awarding grants.

F. *Material Revisions:* No material revision will be permitted for any applicant after the submission deadline.

VII. Application Review Information

A. *Evaluation Criteria:* NTIA will evaluate applications for Mapping Grants on the basis of the following criteria. The relative weight of each criterion is identified in parenthesis.

1. *Data (30%)*—All applicants will be evaluated based on the data they propose to provide to NTIA. As provided above in the section entitled ''Eligibility Information'', each applicant must agree to provide NTIA with broadband data, of the type and in the format provided in the *Technical Appendix,* from all commercial or public providers of broadband service in their respective States, including, but not limited to, commercial or public providers of broadband service to Indian tribes (as defined in Section 4 of the Indian Self-Determination and

[25] Applicants may illustrate such known unserved areas through submission of a map.

[26] Broadband mapping data should be updated at least on March 1 of each year (by submitting data as of December 31 of the previous year) and at least September 1 of each year (by submitting data as of June 30 of that year). Because the initial data collection is due on February 1, 2010, the next update will be due on September 1, 2010 but should include data accurate as of both December 31, 2009 and June 30, 2010, after which, the collections will follow the specified schedule. For the purposes of this program, an update will be deemed to be a verification of existing data and a collection of any additional data reflecting the expansion or contraction of broadband availability since the previous data collection or update.

Education Assistance Act), Native Hawaiian organizations, Community Anchor Institutions or agencies or instrumentalities of the States, or municipalities or other subdivisions of the States and their respective agencies or instrumentalities. Failure to agree to collect such data will render an applicant ineligible for funding under this Program. In no case, however, are applicants required to propose collecting data on broadband service provided by the Federal government or any agencies or instrumentalities of the Federal government or broadband service provided on property owned or leased by the Federal government or any agencies, or instrumentalities of the Federal government.

Reviewers will consider the following factors in scoring this criterion:

(a) Accuracy and Verification. Data accuracy is extremely important and, while NTIA recognizes that 100 percent accuracy is not possible, reviewers will carefully consider an applicant's proposed methods for verifying data.[27] Also, proposed data collection methods that do not provide more than one way to determine the accuracy of availability data at any given location will not receive high scores.

(b) Accessibility. Applicants will be evaluated based on how the data are accessible to, clearly presented to, and easily understood by the public, including members of the research community, and local and State government, excluding any data considered to be Confidential Information, as defined in this Notice.

(c) Security and Confidentiality. Some data collected under the Program may be considered highly sensitive or confidential. Therefore, applicants must demonstrate and will be evaluated based on how well the applicant proposes to protect collected data, including Confidential Information as defined herein, while fulfilling the other criteria provided in this section.

2. *Project Feasibility (30%)*—

(a) *Budget.* This criterion evaluates whether the applicant presents a budget that is both reasonable and cost efficient, considering the full nature and scope of the project. Reviewers will also consider whether the applicant has demonstrated ability to secure the funding necessary to meet the required 20 percent non-Federal matching contribution.

(b) Applicant Capacity, Knowledge, and Experience. Reviewers also will assess whether the applicant possesses the necessary qualifications to complete the proposed project within Program standards. In performing this assessment reviewers will consider the capacity and relevant subject matter specific knowledge and experience of the applicant and the associated project personnel with conducting projects of similar scope and scale. Reviewers will assess the qualifications and past experience of the project leaders and/or partners in dealing with broadband or telecommunications technology and in designing, implementing, and effectively managing and overseeing the projects that collect broadband or telecommunications-related data, and utilize and manage Geographic Information System (GIS) data.

3. *Expedient Data Delivery (20%)*—Applicants will be reviewed based on the timeline on which they project delivery of the initial submission of a substantially complete set of broadband mapping data. This timeline should be ambitious and designed to facilitate the delivery of all data required by the *Technical Appendix.* NTIA will have a preference for the provision of a substantially complete set of availability data by November 1, 2009. Applicants that cannot provide a substantially complete set of availability data by November 1, 2009, may propose to provide an alternative data set by that date. Applicants must demonstrate that they have the ability to complete the project requirements within the proposed timeline, including the requirements to provide a substantially complete set of all broadband mapping data on or before February 1, 2010 and to and to complete such data collection by March 1, 2010. All data provided in the first collection should be accurate as of June 30, 2009.

4. *Process for Repeated Data Updating (10%)*—The broadband landscape is rapidly changing, and both the State broadband maps and national broadband map must be able to reflect these changes. All applicants will be evaluated based on their ability to update the data at least semi-annually and on a continuing basis. Because the initial data collection is due on February 1, 2010, the next update will be due on September 1, 2010 but will collect data as of both December 31, 2009 and June 30, 2010. For all subsequent data updates, data should be updated at least on March 1 of each year (by submitting data as of December 31 of the previous year) and at least September 1 of each year (by submitting data as of June 30 of that year), so as to coincide with the Federal Communications Commission's Form 477 data collections. Applicants are expected to propose to update data for at least five (5) years from the date of award. Applicants are encouraged to consider methods of automated or direct-from-provider data input, while also considering Data Accuracy and Verification needs.

5. *Planning and Collaboration (10%)*—

(a) Collaboration. Collaboration with State-level agencies, local authorities, businesses and non-profit organizations will be a critical component of any successful data collection or mapping effort. Reviewers will carefully consider the transparency and inclusiveness of the process used to plan and execute data collection and State-level broadband mapping. Reviewers will also examine the existing relationships and proposed collaborations with necessary parties, including broadband service providers, information technology companies, mapping companies, State and local governments, geographic information agencies and councils, Community Anchor Institutions, consumer and public interest groups, Indian tribes (as defined in Section 4 of the Indian Self-Determination and Education Assistance Act), Native Hawaiian organizations, minority and vulnerable populations, industry, and other such parties and institutions.

If applicable, any applications that do not include the collection of data from Indian tribes (as defined in Section 4 of the Indian Self-Determination and Education Assistance Act), tribal lands, or Native Hawaiian organizations will not be eligible for grants.

(b) Planning. In addition to inclusiveness and collaboration, proposals including planning components will be evaluated based on how well the proposed planning process will identify service availability and gaps, analyze problems and opportunities related to broadband deployment, and determine priorities as well as resolve conflicting priorities. Planning proposals must present the following: (1) The BDIA-related purpose as listed footnote 6; (2) the problem(s) to be addressed; (3) the proposed solution; (4) the anticipated outcomes of the project; and (5) the cost of such proposal in light of the previous factors.

VIII. Anticipated Award Dates

NTIA will announce the awards starting on or about September 15, 2009.

[27] For example, a project should propose to collect availability data by address, as required by the *Technical Appendix,* and should cross-check that data for accuracy by using at least one other metric (*e.g.,* the location and capability of local infrastructure and whether such infrastructure could realistically serve a supposed service address, on-the-ground verification or telephone survey. Each method should be used to check a statistically significant sample of all addresses, and a statistically significant sample of rural addresses).

NTIA will make award documents available to successful applicants within thirty (30) calendar days of the award announcement. NTIA expects compliance with all applicable documentation requirements from successful applicants within sixty (60) calendar days of award announcement.

IX. Award Administration Information

A. *Award Notices:* Applicants will be notified by the Department of Commerce's Grants Officer if their applications are selected for an award. If the application is selected for funding, the Department of Commerce's Grants Officer will issue the grant award (Form CD–450), which is the authorizing financial assistance award document. By signing the Form CD–450, the awardee agrees to comply with all award provisions. NTIA will provide the Form CD–450 by mail or overnight delivery to the appropriate business office of the recipient's organization. The awardee must sign and return the Form CD–450 without modification within thirty (30) calendar days of receipt.

If an applicant is awarded funding, neither the Department of Commerce nor NTIA is under any obligation to provide any additional future funding in connection with that award or to make any future award(s). Amendment or renewal of an award to increase funding or to extend the period of performance is at the discretion of the Department of Commerce and of NTIA.

B. *Award Terms and Conditions:*

1. *Scope.* Awardees, including all contractors and subcontractors, are required to comply with the obligations set forth in the Recovery Act and the requirements established herein. Any obligation that applies to the awardee shall extend for the life of the Federally-funded facilities.

2. *Access to Records for Audits, Site Visits, Monitoring and Law Enforcement Purposes.* The Inspector General of the Department of Commerce, or any of his or her duly authorized representatives, and NTIA representatives, or any of their duly authorized representatives, shall have access to and the right to inspect any property or documents funded by the grant, or relating to the grant funding, of the parties to a grant, including their subsidiaries, if any, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic or other process or medium, in order to make audits, inspections, site visits, excerpts, transcripts, copies, or other examinations as authorized by law. An audit of an award may be conducted at any time.

C. *Award Conditions:* Awardees are required to comply with the Department of Commerce Financial Assistance Standard Terms and Conditions (March 8, 2008), the Department of Commerce American Recovery and Reinvestment Act Award Terms (April 9, 2009), and any Special Award Terms and Conditions that are included by the Grants Officer in the award.

X. Other Information

A. *Discretionary Awards:* The Federal Government is not obligated to make any award as a result of this announcement, and will fund only projects that are deemed likely to achieve the Program's goals and for which funds are available.

B. *Third Party Beneficiaries:* The State Broadband Data Program is a discretionary grant program that is not intended to and does not create any rights enforceable by third party beneficiaries.

C. *Recovery Act Logo:* As provided above in the section entitled ''Funding Restrictions,'' neither mapping nor planning projects may include construction costs. However, all projects that are funded by the Recovery Act, including projects under this Program, shall display signage that features the Primary Emblem throughout the construction phase. The signage should be displayed in a prominent location on site. Some exclusions may apply. The Primary Emblem should not be displayed at a size less than 6 inches in diameter.

D. *Environmental and National Historic Preservation Requirements:* All applicants seeking Federal funding may be required to provide adequate environmental information and gather information from Federal and State regulatory agencies, including the designated State Historic Preservation Officer and Indian tribes, as appropriate. Applications must comply with the National Environmental Policy Act of 1969, as amended (NEPA), and Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), and may require the submission of additional information early in the application process. Applicants will also be required to cooperate with NTIA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NTIA to make an assessment on any impacts that a project may have on the environment.

NEPA's implementing regulations require NTIA to provide, as appropriate, public notice of the availability of project-specific environmental documents. Detailed information on NTIA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/procedures.html* under ''Department of Commerce Categorical Exclusions and Administrative Record'' and the ''NTIA Broadband Technology Opportunity Program Categorical Exclusions and Administrative Record.'' Written requests for a hard copy should be submitted to: Steve Kokkinakis, National Oceanic and Atmospheric Administration, Office of Program Planning & Integration, SSMC3, Room 15723, 1315 East-West Highway, Silver Spring, MD 20910.

E. *Davis-Bacon Wage Requirements:* Pursuant to section 1606 of the Recovery Act, any project using Recovery Act funds requires the payment of not less than the prevailing wages for ''all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government.'' [28]

F. *Buy America:* None of the funds appropriated or otherwise made available by the Recovery Act may be used for the construction, alteration, maintenance, or repair of a public building or public work (as such terms are defined in 2 CFR 176.140) unless all of the iron, steel, and manufacturing goods used in the project are produced in the United States.[29]

G. *Financial and Audit Requirements:* To maximize the transparency and accountability of funds authorized under the Recovery Act, all applicants are required to comply with the applicable regulations set forth in OMB's Interim Final Guidance for Federal Financial Assistance.[30]

Recipients that expend $500,000 or more of Federal funds during their fiscal year are required to submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with the U.S. General Accountability Office, Government Auditing Standards, located at *http://www.gao.gov/govaud/*

[28] Recovery Act § 1606, 123 Stat. at 303.

[29] Recovery Act, § 1605, 123 Stat. at 303.

[30] *See* Requirements for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 for Financial Assistance Awards, 74 FR 18, 449 (Apr. 23, 2009).

ybk01.htm, and OMB Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, located at *http://www.whitehouse.gov/omb/circulars/a133/a133.html.* Awardees are responsible for ensuring that sub-recipient audit reports are received and for resolving any audit findings.

H. *Deobligation:* NTIA reserves the right to deobligate awards to recipients under this Notice that demonstrate an insufficient level of performance, or wasteful or fraudulent spending, and award these funds competitively to new or existing applicants.

I. *Disposition of Unsuccessful Applications:* Unsuccessful applications accepted for review for the Fiscal Year 2009 the State Broadband Data Program will be retained for two years, after which they will be destroyed.

J. *Compliance with Applicable Laws and Administrative Requirements:* Any recipient and subrecipient of funds under this Notice shall be required to comply with all applicable obligations set forth in the Recovery Act and all Federal and State laws. Administrative and national policy requirements for State Broadband Data Program funding, *inter alia,* are contained in the DOC American Recovery and Reinvestment Act Award Terms (Apr. 9, 2009) and *Pre-Award Notification Requirements for Grants and Cooperative Agreements* (DOC Pre-Award Notice), published in the **Federal Register** on February 11, 2008 (73 FR 7696), as amended. This notice may be accessed by entering the **Federal Register** volume and page number provided in the previous sentence at the following Internet Web site: *http://www.gpoaccess.gov/fr/index.html.* All State Broadband Data Program applicants are required to comply with all applicable provisions set forth in the DOC Pre-Award Notice.

Note that section 1515 of the Recovery Act authorizes the Inspector General to examine records and interview officers and employees of the grantee and other entities regarding the award of funds.[31]

K. *Waiver Authority:* It is the general intent of NTIA not to waive any of the provisions set forth in this Notice. However, under extraordinary circumstances and when it is in the best interests of the Federal government, NTIA, upon its own initiative or when requested, may waive the provisions in this Notice. Waivers may only be granted for requirements that are discretionary and not mandated by statute or other applicable law. Any request for a waiver must set forth the extraordinary circumstances for the request and be included in the application or sent to the address provided in ''NTIA Contacts'' above.

L. *Limitation of Liability:* Under no circumstances will NTIA or the Department of Commerce be responsible for proposal preparation costs if this Program fails to receive funding or is canceled because of other NTIA priorities. Publication of this announcement does not oblige NTIA to award any specific project or to obligate any available funds.

M. *Cooperation with NTIA and FCC National Broadband Mapping Efforts:*

Cooperation. In addition to the other requirements provided in this Notice, all awardees agree to cooperate with NTIA and the FCC's national broadband mapping efforts. In particular, awardees agree that, to the extent necessary, they will coordinate with and lend reasonable assistance to NTIA and the FCC, or the employees, agents, representatives, contractors, vendors or consultants of each, in such parties' efforts to assist the recipients in their data collection or to collect broadband mapping related data directly in the States.

In the case that an application on behalf of a State fails to satisfy the requirements of this Program, NTIA reserves the right to collect broadband mapping data relating to such State directly or through NTIA's authorized agent, contractor or representative, using whatever means are within its legal authority.[32]

FCC Authority. Insofar as awardees are unwilling or unable to obtain requested data, NTIA reserves the right to request that the FCC exercise its authority to compel data production from any broadband service provider subject to its jurisdiction.

N. *Administrative Procedure Act and Regulatory Flexibility Act Statement:* This Notice is being issued without prior notice or public comment. The Administrative Procedure Act (APA), 5 U.S.C. 553, has several exemptions to rulemaking requirements. Among them is an exemption for ''good cause'' found at 5 U.S.C. 553(b)(B), which allows effective government action without rulemaking procedures where withholding the action would be ''impracticable, unnecessary, or contrary to the public interest.''

Commerce has determined, consistent with the APA, that making these funds available under this Notice for broadband development, as mandated by the Recovery Act, is in the public interest. Given the emergency nature of the Recovery Act and the extremely short time period within which all funds must be obligated, withholding this Notice to provide for public notice and comment would unduly delay the provision of benefits associated with these broadband initiatives and be contrary to the public interest.

For the same reasons, Commerce finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this action. Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553(d)(3) or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

O. *Congressional Review of Act:* NTIA has submitted this Notice to the Congress and the Government Accountability Office under the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801 *et seq.* This Notice is a ''major rule'' within the meaning of the Act because it will result in an annual effect on the economy of $100,000,000 or more. This Notice sets out the administrative procedures for making grants to State, local, tribal and other State approved organizations for the development and implementation of statewide initiatives to identify and track the availability and adoption of broadband services within each State through the State Broadband Data Program.

With funds made available through the Recovery Act, the State Broadband Data Program will provide approximately $240 million in grants to assist eligible entities, including States, in developing State-specific data on the deployment levels and adoption rates of broadband services. All grant funds must be obligated by September 30, 2010. The State-specific data collected through this Program will help to determine those areas of the United States that are ''unserved'' or ''underserved'' and so inform the award of grants under BTOP, which grants also must be awarded no later than September 30, 2010. The data will also be used in the development of the national broadband map that NTIA is required to create and make publicly available by February 2011 under Section 6001(l) of the Recovery Act. A 60-day delay in implementing this Notice would hamper NTIA's mission to expeditiously provide assistance to eligible entities for the development of this key State-specific data on broadband deployment levels and adoption rates as well as hinder NTIA's

[31] Recovery Act § 1515, 123 Stat. at 289.

[32] Recovery Act § 6001(l), 123 Stat. at 516 requires that NTIA develop and maintain a comprehensive nationwide inventory map of existing broadband service capability and availability in the United States.

ability to meet the purposes of the BTOP and national broadband map development in a timely fashion.

Thus, in compliance with Section 808(2) of the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 808(2), for good cause, NTIA finds that notice and public comment on this Notice is impracticable and contrary to the public interest. This finding is consistent with the objectives of the Recovery Act, which specifically provides clear preferences for rapid agency action and quick-start activities designed to spur job creation and economic benefit.[33] Accordingly, this Notice shall take effect upon publication in the **Federal Register**.

P. *Paperwork Reduction Act:* This notice contains an information collection requirement subject to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Applicants have been requested to submit applications using Standard Form 424, Program Abstract/Program Narrative; Standard Form 424, Application for Federal Assistance; Standard Form 424A, Budget Information—Non-Construction Programs; Standard Form 424B, Assurances—Non-Construction Programs; and Standard Form LLL, Disclosure of Lobbying Activities, all of which have been approved by OMB under the respective control numbers 4040–0003, 4040–0004, 4040–0006, 4040–0007 and 0348–0046.

Copies of all forms, regulations, and instructions referenced in this Notice may be obtained from NTIA. Data furnished by the applicants will be used to determine eligibility for Program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in Program benefits being withheld or denied.

The collection of information is vital to NTIA to ensure compliance with the provisions of this Notice and to fulfill the requirements of the Recovery Act. In summary, the collection of broadband data, as required under the *Technical Appendix,* is necessary in order to implement this Program.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

1. *General Recovery Act and BDIA Reporting Requirements*

(a) *OMB Reporting Requirements Implementing the Recovery Act.* Any grant awarded under this Notice shall be subject to the applicable regulations and statutes regarding reporting on Recovery Act funds. For specific Recovery Act requirements, *see* 2 CFR part 176.[34]

(b) *Accounting.* If Recovery Act funds are combined with other funds to fund or complete projects and activities, Recovery Act funds must be accounted for separately from other funds and reported to NTIA or any Federal Web site established for Recovery Act reporting purposes. Moreover, recipients of funds under this Notice must also comply with the accounting requirements as established or referred to in this Notice.

(c) *Required Data Elements.* The awardee and each contractor engaged by the awardee must submit the following information to NTIA:

i. The total amount of Recovery Act funds received;

ii. The amount of Recovery Act funds received that were expended or obligated to projects or activities;

iii. A detailed list of all projects or activities for which Recovery Act funds were expended or obligated, including (a) the name of the project or activity; (b) a description of the project or activity; (c) an evaluation of the completion status of the project or activity; (d) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and

iv. Detailed information on any subcontracts or subgrants awarded by the awardee to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 102–282), allowing aggregate reporting on awards below $25,000 or to individuals.[35]

2. *Reporting Deadlines.* Recovery Act reports are due to NTIA ten (10) calendar days after the quarter in which the award was issued ends and, unless otherwise noted, each quarter thereafter until a final report is made at the end of five (5) years. The final report should summarize the awardee's quarterly filings and state whether the project goals have been satisfied. Pursuant to OMB Guidelines, reports should be submitted electronically to *http://www.federalreporting.gov*. If the awardee fails to submit an acceptable quarterly report or audited financial statement within the timeframe designated in the grant or loan award, NTIA may suspend further payments until the awardee complies with the reporting requirements. Additional information regarding reporting requirements will also be specified at the time the award is issued.

3. *State Broadband Data Program Reporting Requirements.* All awardees under this Program will provide quarterly reports on:

(a) Achievement of project goals, objectives, and milestones (*e.g.,* collection of a ''substantially complete data set''; completion of data review or quality control process) as set forth by the applicant in their application timeline:

i. Expenditure of grant funds and how much of the award remains;

ii. Amount of non-Federal cash or in-kind investment that is being added to complete the project; and

iii. Whether the awardee is on schedule to provide broadband-related data in accordance with the mapping project timeline.

Upon completion of its State-level broadband map, each awardee will provide NTIA with a hypertext link to such map for display on a Web page on the Department of Commerce Web site.

Q. *Payment of Federal Funds:* NTIA will not make any payment under an award until the grantee has returned the signed CD–450 accepting the award and unless and until the recipient complies with all relevant requirements.

R. *Executive Order 12372 (Intergovernmental Review):* Applications under this Program are not subject to Executive Order (EO) 12372, ''Intergovernmental Review of Federal Programs.''

S. *Executive Order 12866:* This notice has been determined to be Economically Significant under Executive Order 12866. The Secretary of Commerce was authorized by the Recovery Act to fund the BDIA and implement the State Broadband Data Program. This Program will make approximately $240 million in funds available for eligible entities to develop and implement statewide initiatives to identify and track the availability and adoption of broadband services within each State. This is a one-time grant program in which funds will be awarded no later than September 30, 2010.

T. *Executive Order 13132 (Federalism):* It has been determined that this Notice does not contain policies with Federalism implications as that term is defined in E.O. 13132.

U. *Recovery Act:* Additional information about the Recovery Act is available at *http://www.Recovery.gov*.

[33] *See, e.g.,* Recovery Act § 1602, 123 Stat. at 302.

[34] *See also* OMB Memorandum M–09–21, Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009, June 22, 2009 (OMB Implementing Guidance). For additional Recovery Act Implementation Guidance applicable to recipients, see OMB Implementing Guidance at 6–7.

[35] Recovery Act § 1512(c), 123 Stat. at 287.

Authority: Title II, Division A of the American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115 (Feb. 17, 2009); Broadband Data Improvement Act, Title I of Public Law 110–385, 122 Stat. 4096 (Oct. 10, 2008).

Dated: July 2, 2009.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

Appendix A: Technical Appendix

Awardees shall provide the following information to NTIA in the format specified via ftp to *sftp.ntia.doc.gov* or CD/DVD to Edward ''Smitty'' Smith, Program Director, State Broadband Data Program, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4898, Washington, DC 20230 no later than February 1, 2010. *All data should be accurate as of June 30, 2009, unless otherwise indicated.* Questions about the data content or formats should be addressed to Your Name at *broadbandmapping@ntia.doc.gov.*

1. Broadband Service Availability in Provider's Service Area

(a) Availability by Service Address-Service Associated With Specific Addresses

For each facilities-based provider of broadband service to specified end-user locations in their State, awardees shall provide NTIA with a list of all addresses at which broadband service is available to end users in the provider's service area, along with the associated service characteristics identified below.

For this purpose, ''broadband service'' is the provision, on either a commercial or non-commercial basis, of data transmission technology that provides two-way data transmission to and from the Internet with advertised speeds of at least 768 kilobits per second (kbps) downstream and greater than 200 kbps upstream to end users, or providing sufficient capacity in a middle mile project to support the provision of broadband service to end-users within the project area.

For this purpose, an ''end user'' of broadband service is a residential or business party, institution or State or local government entity that may use broadband service for its own purposes and that does not resell such service to other entities or incorporate such service into retail Internet-access services. Internet Service Providers (ISPs) are not ''end users'' for this purpose. An entity is a ''facilities-based'' provider of broadband service connections to end user locations if any of the following conditions are met: (1) It owns the portion of the physical facility that terminates at the end user location; (2) it obtains unbundled network elements (UNEs), special access lines, or other leased facilities that terminate at the end user location and provisions/equips them as broadband; or (3) it provisions/equips a broadband wireless channel to the end user location over licensed or unlicensed spectrum.

For this purpose, ''broadband service'' is ''available'' at an address if the provider does, or could, within a typical service interval (7 to 10 business days) without an extraordinary commitment of resources, provision two-way data transmission to and from the Internet with advertised speeds of at least 768 kilobits per second (kbps) downstream and greater than 200 kbps upstream to end-users at that address. The list of addresses shall be submitted to NTIA as a tab-delimited text file in which each record has the following format:

RECORD FORMAT FOR ADDRESS DATA FOR EACH PROVIDER

Field	Description	Type	Example
Provider Identification Data:			
Provider Name	Provider Name	Text	ABC Co.
DBA Name	''Doing-business-as'' name	Text	Superfone, Inc.
FRN	Provider FCC Registration Number	Integer	8402202.
ID	Sequential record number	Integer	1.
End User location/Service Data:			
End-User Address	Complete address	Text	1401 Constitution Ave., NW., Washington, DC 20230.
End-User Building Number	Building number	Text	1401.
End-User Prefix Direction	Prefix direction	Text.	
End-User Street	Street name	Text	Constitution.
End-User Street Type	Street type	Text	Ave.
End-User Suffix Direction	Suffix direction	Text	NW.
End-User City	City	Text	Washington.
End-User State Abbreviation.	Two-letter State postal abbreviation	Text	DC.
End-User ZIP Code	5-digit ZIP code (with leading zeros)	Text	20230.
End-User ZIP Plus 4	4-digit add-on code (with leading zeros)	Text	0005.
Category of End User	Category of End User Served at Address (see details below for codes).	Integer	3.
Technology of Transmission.	Category of technology available for the provision of service at the address (see details below for codes).	Integer	50.
Maximum Advertised Downstream Speed.	Speed tier code for the maximum advertised downstream speed available at the address (see details below for codes).	Integer	8.
Maximum Advertised Upstream Speed.	Speed tier code for the maximum advertised upstream speed that is offered with the above maximum advertised downstream speed available at the address (see details below for codes).	Integer	8.

RECORD FORMAT FOR ADDRESS DATA FOR EACH PROVIDER—Continued

Field	Description	Type	Example
Typical Downstream Speed.	Speed tier code for the downstream data transfer throughput rate that most subscribers to service at the maximum advertised downstream speed (above) can achieve consistently during expected periods of heavy network usage (see details below for codes).	Integer	8
Typical Upstream Speed ..	Speed tier code for the upstream data transfer throughput rate that most subscribers to service at the maximum advertised upstream speed (above) can achieve consistently during expected periods of heavy network usage (see details below for codes).	Integer	8.

Address Record Format Details:

1. All fields are required.

2. Instructions for providers needing to obtain a FRN can be accessed at *https://fjallfoss.fcc.gov/coresWeb/publicHome.do.*

3. The ID field is a sequential integer ranging from 1 to the total number of addresses.

4. Address data fields should be space-delimited in standardized Postal Service form. See *http://pe.usps.gov/cpim/ftp/pubs/Pub28/pub28.pdf.*

5. Categories of end users should be entered as integers based on the following reference:

END USER CODES

End user category code	End user category	Description
1	Residential	Address denotes a residential living unit, individual living unit in institutional settings such as college dormitories and nursing homes and other locations designed primarily for residential use at which broadband service is available.
2	Governmental	Address denotes a State or local government location at which broadband service is available.
3	Small Business	Address denotes the location of a small business.
4	Medium or Large Enterprise	Address denotes the location of a medium or large enterprise.
5	Other	Address denotes a location not meeting any of the above descriptions.

6. For reporting the technology of transmission, report the technology used by the portion of the connection that terminates at the end-user location. If different technologies are used in the two directions of information transfer (''downstream'' and ''upstream''), report the connection in the technology category for the downstream direction. The technology of transmission should be entered as an integer based on the following reference:

TECHNOLOGY OF TRANSMISSION CODES

Technology code	Description	Details
10	Asymmetric xDSL.	
20	Symmetric xDSL.	
30	Other Copper Wireline	All copper-wire based technologies other than xDSL (Ethernet over copper and T–1 are examples).
40	Cable Modem—DOCSIS 3.0.	
41	Cable Modem—Other.	
50	Optical Carrier/Fiber to the End User	Fiber to the home or business end user (does not include ''fiber to the curb'').
60	Satellite.	
70	Terrestrial Fixed Wireless—Unlicensed.	
71	Terrestrial Fixed Wireless—Licensed.	
80	Terrestrial Mobile Wireless.	
90	Electric Power Line.	
0	All Other	Any specific technology not listed above.

7. Speed tiers should be entered as integers based on the following reference:

SPEED TIER CODES

Upload speed tier	Download speed tier	Description
1		Less than or equal to 200 kbps.
2		Greater than 200 kbps and less than 768 kbps.
3	3	Greater than or equal to 768 kbps and less than 1.5 mbps.
4	4	Greater than or equal to 1.5 mbps and less than 3 mbps.
5	5	Greater than or equal to 3 mbps and less than 6 mbps.
6	6	Greater than or equal to 6 mbps and less than 10 mbps.
7	7	Greater than or equal to 10 mbps and less than 25 mbps.
8	8	Greater than or equal to 25 mbps and less than 50 mbps.
9	9	Greater than or equal to 50 mbps and less than 100 mbps.
10	10	Greater than or equal to 100 mbps and less than 1 gbps.
11	11	Greater than or equal to 1 gbps.

8. Data for the entire State or territory should be submitted as a single, tab-delimited plain text file named ''address_availability_XX.txt'' where XX is the two-letter postal abbreviation for the State or territory.

(b) Availability by Shapefile—Wireless Services not Provided to a Specific Address

For those facilities-based providers of wireless broadband service that is not address specific (e.g., nomadic, terrestrial mobile wireless, or satellite), awardees may alternatively provide NTIA with GIS-compatible map layers depicting areas in which broadband service is available to end users.

For this purpose, an ''end user'' of broadband service is a residential or business party, institution, or State or local government entity that may use broadband service for its own purposes and that does not resell such service to other entities or incorporate such service into retail Internet-access service. Internet Service Providers (ISPs) are not ''end users'' for this purpose. An entity is a ''facilities-based'' provider of broadband service connections to end user locations if any of the following conditions are met: (1) It owns the portion of the physical facility that terminates at the end user location; (2) it obtains unbundled network elements (UNEs), special access lines, or other leased facilities that terminate at the end user location and provisions/equips them as broadband; or (3) it provisions/equips a broadband wireless channel to the end user location over licensed or unlicensed spectrum.

For this purpose, ''broadband service'' is ''available'' at a location if the provider does, or could, within a typical service interval (7 to 10 business days) without an extraordinary commitment of resources, provision two-way data transmission with advertised speeds of at least 768 kilobits per second (kbps) downstream and greater than 200 kbps upstream to end-users at that location. The data shall be submitted to NTIA as an ESRI Shapefile such that the associated data contains the following fields:

RECORD FORMAT FOR AVAILABILITY AREA DATA FOR EACH PROVIDER—USE ONLY IN CONNECTION WITH WIRELESS SERVICES NOT PROVIDED TO A SPECIFIC ADDRESS

Field	Description	Type	Example
Provider Name	Provider Name	Text	ABC Co.
DBA Name	''Doing-business-as'' name	Text	Superfone, Inc.
FRN	Provider FCC Registration Number	Integer	8402202.
Technology of Transmission	Category of technology for the provision of service (see details following Part 1(a) for codes).	Integer	41.
Spectrum Used	If technology of transmission is wireless, is Cellular spectrum (824–849 MHz; 862–869) used to provide service (Y/N)?	Text	Y.
Spectrum Used	If technology of transmission is wireless, is 700 MHz spectrum (698–758 MHz; 775–788 MHz; 805–806 MHz) used to provide service (Y/N)?	Text	Y.
Spectrum Used	If technology of transmission is wireless, is Broadband Personal Communications Services spectrum (1850–1915 MHz; 1930–1995) used to provide service (Y/N)?	Text	Y.
Spectrum Used	If technology of transmission is wireless, is Advanced Wireless Services spectrum (1710–1755 MHz; 2100–2155) used to provide service (Y/N)?	Text	N.
Spectrum Used	If technology of transmission is wireless, is Broadband Radio Service/Educational Broadband Service spectrum (2496–2690 MHz) used to provide service (Y/N)?	Text	N.
Spectrum Used	If technology of transmission is wireless, is Unlicensed (including broadcast television ''white spaces'') spectrum used to provide service (Y/N)?	Text	N.

RECORD FORMAT FOR AVAILABILITY AREA DATA FOR EACH PROVIDER—USE ONLY IN CONNECTION WITH WIRELESS SERVICES NOT PROVIDED TO A SPECIFIC ADDRESS—Continued

Field	Description	Type	Example
Spectrum Used	If technology of transmission is wireless, but the spectrum used to provide service is not listed above, please identify as one of the following: Specialized Mobile Radio Service (SMR) (817–824 MHz; 862–869 MHz; 896–901 MHz; 935–940 MHz), Wireless Communications Service (WCS) spectrum (2305–2320 MHz; 2345–2360 MHz), 3650–3700 MHz, Satellite (L-band, Big LEO, Little LEO, 2 GHz).	Text	SMR.
Maximum Advertised Downstream Speed	Speed tier code for the maximum advertised downstream speed available (see details following Part 1(a) for codes).	Integer	8.
Maximum Advertised Upstream Speed	Speed tier code for the maximum advertised upstream speed that is offered with the above maximum advertised downstream speed available (see details following Part 1(a) for codes).	Integer	8.
Typical Downstream Speed	Speed tier code for the downstream data transfer throughput rate that most subscribers to service at the maximum advertised downstream speed (above) can achieve consistently during expected periods of heavy network usage (see details following Part 1(a) for codes).	Integer	8.
Typical Upstream Speed	Speed tier code for the upstream data transfer throughput rate that most subscribers to service at the maximum advertised upstream speed (above) can achieve consistently during expected periods of heavy network usage (see details following Part 1(a) for codes).	Integer	8.

Availability Area Shapefile Details:

1. Instructions for providers needing to obtain a FRN can be accessed at *https://fjallfoss.fcc.gov/coresWeb/publicHome.do.*

2. All map areas must be closed, non-overlapping polygons with a single, unique identifier.

3. Any variation in any of the required fields necessitates the creation of a separate closed, non-overlapping polygon.

4. In the area covered by each polygon, subscribers must have broadband service with the speed characteristics shown in the data record 95% of the time to within 50 feet of the polygon's boundary.

5. The technology of transmission should be entered as an integer based on the coding scheme shown in Part 1(a) above.

6. The speed tiers should be entered as integers according to the reference in Part 1(a) above.

7. The data must be expressed using the WGS 1984 geographic coordinate system.

8. Maps must be accompanied by metadata or a plain text ''readme'' file that contains a comprehensive explanation of the methodology employed to generate the map layer including any necessary assumptions and an assessment of the accuracy of the finished product.

9. Since ESRI Shapefiles typically consist of 5 to 7 individual files including the associated metadata and geodatabase, data for the entire State or territory should be submitted as a single, zipped file containing all the component files. The file should be named ''area_availability_XX.zip'' where XX is the two-letter postal abbreviation for the State or territory.

2. Residential Broadband Service Pricing in Provider's Service Area

(a) Average Revenue per End User and Weighted Average Speed

For each broadband service provider in the State, awardees shall provide NTIA with (1) average revenue per end user (ARPU) associated with residential subscribers in the month for which other data is reported (*i.e.*, June or December, as applicable) by county, and (2) subscriber-weighted nominal speed (blended average rate).

For this purpose, a ''residential subscriber'' of broadband service is any end user assigned to Category 1, in Part 1.(a), above.

For this purpose, ''broadband service'' is the provision to end users of two-way data transmission to and from the Internet with advertised speeds of at least 768 kilobits per second (kbps) downstream and greater than 200 kbps upstream.

These data shall be submitted to NTIA as a tab-delimited text file in which each record has the following format:

RECORD FORMAT FOR RESIDENTIAL BROADBAND SERVICE PRICING AND SPEED CHARACTERISTICS BY COUNTY FOR EACH PROVIDER

Field	Description	Type	Example
Record Identifiers:			
Provider Name	Provider Name	Text	ABC Co.
DBA Name	''Doing-business-as'' name	Text	Superfone, Inc.
FRN	Provider FCC Registration Number	Integer	8402202.

RECORD FORMAT FOR RESIDENTIAL BROADBAND SERVICE PRICING AND SPEED CHARACTERISTICS BY COUNTY FOR EACH PROVIDER—Continued

Field	Description	Type	Example
County	3-digit County ANSI (FIPS) Code	Integer	560.
State	2-digit State ANSI (FIPS) Code	Integer	51.
Technology of Transmission	Category of technology used in the provision of service (see details following Part 1(a) for codes).	Integer	2.
ARPU, All Advertised Speed Offerings	Average monthly revenue per residential user for the county (see details below for methodology).	Float	34.45.
Subscriber-Weighted Nominal Speed	Subscriber-weighted nominal speed (blended average rate in kbps) (see details below for methodology).	Float	2753.3.

Service Plan Record Detail:

1. Instructions for providers needing to obtain a FRN can be accessed at *https://fjallfoss.fcc.gov/coresWeb/publicHome.do*.

2. Use the set of counties that best approximate each market area of the provider. County ANSI (formerly FIPS) codes may be accessed at *http://www.census.gov/geo/www/ansi/ansi.html*.

3. For each county in the provider's broadband Internet service area, all applicable fields must be populated.

4. For reporting the technology of transmission, report the technology used by the portion of the connection that terminates at the end-user location. If different technologies are used in the two directions of information transfer (''downstream'' and ''upstream''), report the connection in the technology category for the downstream direction. The technology of transmission should be entered as an integer based on the coding scheme shown in Part 1(a) above.

5. The speed tiers should be entered as integers according to the reference in Part 1(a) above.

6. As an example, for June 2009, a provider's ARPU should be calculated by dividing the provider's total monthly residential broadband service revenue for the county by its average monthly residential broadband subscribers.

(a). The ARPU entered in the record format above must be the monthly ARPU for June 2009 calculated by dividing (i) total monthly residential broadband service revenue by (ii) average monthly residential broadband subscribers.

i. *Numerator:* Total monthly residential broadband service revenue must be calculated as total revenue for the month (monthly data access fees including discounts, overage charges and service or connection fees, but excluding all taxes, fees and surcharges paid to government programs, e.g., E911) attributable to the provision of broadband service to billed residential subscribers in the county for June 2009.

ii. *Denominator:* Average monthly residential broadband subscribers must be calculated as the simple average of beginning-of-month and end-of-month counts of billed residential subscribers to broadband service in the county for June 2009.

7. A provider's subscriber-weighted nominal speed (in kbps) should be calculated as the sum of the products of the provider's advertised maximum download data transmission rate (in kbps) for each residential rate tier advertised by the provider in the county, times the average monthly number of residential subscribers receiving the advertised download transmission rate tier for the relevant reporting month (*i.e.,* June or December, as applicable), divided by the average total number of residential subscribers for all the included data transmission rate tiers in the county for that month. This is expressed in the following formula:

$$\frac{(\text{speed tier-1 in kbps} \times \text{no. of tier-1 subscribers}) + (\text{speed tier-2 in kbps} \times \text{no. of tier-2 subscribers}) + \ldots}{\text{total average monthly subscribers}}$$

For example, if the service provider offers two tiers of service with advertised maximum download speeds of 1500 kbps and 6000 kbps, calculate the product of 1500 kbps times the average monthly number of residential subscribers to the 1500 kbps speed tier plus the product of 6000 kbps times the average monthly number of residential subscribers to the 6000 kbps speed tier and divide the sum by the sum (or total) of the average monthly number of residential subscribers in both tiers.

8. Data for the entire State or territory should be submitted as a single, tab-delimited plain text file named ''pricing_XX.txt'' where XX is the two-letter postal abbreviation for the State or territory.

3. Broadband Service Infrastructure in Provider's Service Area

(a) Last-Mile Connection Points

Awardees shall provide NTIA with a list of the locations of the first points of aggregation in the networks (serving facilities) used by facilities-based providers to provide broadband service to end users.

For this purpose, an ''end user'' of broadband service is a residential or business party, institution, or State or local government entity that may use broadband service for its own purposes and that does not resell such service to other entities or incorporate such service into retail Internet-access service. Internet Service Providers (ISPs) are not ''end users'' for this purpose. An entity is a ''facilities-based'' provider of broadband service connections to end user locations if any of the following conditions are met: (1) It owns the portion of the physical facility that terminates at the end user location; (2) it obtains unbundled network elements (UNEs), special access lines, or other leased facilities that terminate at the end user location and provisions/equips them as broadband; or (3) it provisions/equips a broadband wireless channel to the end user location over licensed or unlicensed spectrum.

''Last-mile'' infrastructure consists of facilities used to provide broadband service between end-user (including residences, businesses, community anchor institutions, etc.) equipment and the appropriate access point, router or

first significant aggregation point in the broadband network. Examples of such facilities include, among other things: For broadband service provided by incumbent local exchange carriers, connections between end users and the central office or remote terminal; for cable modem service, connections between end users and the cable headend or fiber node; for wireless broadband service, connections between the wireless end-user device or customer premises equipment and the wireless tower or base station; for WiFi broadband service, connections between end users and the WiFi access point; or the analogous portion of the facilities of other providers of broadband services. The first points of aggregation in this context are therefore the central office, remote terminal, cable headend, wireless tower or base station, or the like.

For this purpose, ''broadband service'' is the provision of two-way data transmission with advertised speeds of at least 768 kilobits per second (kbps) downstream and greater than 200 kbps upstream to end users. These data shall be submitted to NTIA as a tab-delimited text file in which each record has the following format:

RECORD FORMAT FOR LAST-MILE CONNECTION POINTS DATA FOR EACH PROVIDER

Field	Description	Type	Example
Provider Name	Provider Name	Text	ABC Co.
DBA Name	''Doing-business-as'' name	Text	Superfone, Inc.
FRN	FCC Registration Number	Integer	8402202.
Technology of Transmission	Category of technology for the provision of service (see details following Part 1(a) for codes).	Integer	10.
Serving Facility Backhaul Capacity	Upstream capacity of the serving facility (see details below).	Integer	1.
Serving Facility Backhaul Type	Type of upstream transport facility (1=Fiber; 2=Copper; 3=Hybrid Fiber Coax (HFC); 4=Wireless).	Integer	1.
End-users served	Count of end users served from this point of aggregation.	Integer	24.
Latitude	Latitude in decimal degrees of facility	Float	38.884560.
Longitude	Longitude in decimal degrees of facility	Float	−77.028123.
Elevation	Elevation relative to grade to the nearest foot (positive integers indicate above grade, negative below grade).	Integer	2.

Connections to Last-Mile Infrastructure Record Detail:

1. Instructions for providers needing to obtain a FRN can be accessed at *https://fjallfoss.fcc.gov/coresWeb/publicHome.do*.

2. The technology of transmission should be entered as an integer based on the coding scheme shown in Part 1(a) above.

3. The capacity of the serving facility should represent the capacity as currently configured and be expressed according to the following reference:

SERVING FACILITY CODES

Data rate code	Data rate
1	Less than 1.5 mbps.
2	Greater than or equal to 1.5 mbps and less than 3 mbps.
3	Greater than or equal to 3 mbps and less than 6 mbps.
4	Greater than or equal to 6 mbps and less than 10 mbps.
5	Greater than or equal to 10 mbps and less than 25 mbps.
6	Greater than or equal to 25 mbps and less than 50 mbps.
7	Greater than or equal to 50 mbps and less than 100 mbps.
8	Greater than or equal to 100 mbps and less than 1 gbps.
9	Greater than or equal to 1 gbps.

4. Coordinates must be expressed using the WGS 1984 geographic coordinate system.

5. Data for the entire State or territory should be submitted as a single, tab-delimited plain text file named ''lastmile_XX.txt'' where XX is the two-letter postal abbreviation for the State or territory.

(b) Middle-Mile and Backbone Interconnection Points

In addition to the information shown in the tables above, awardees shall provide NTIA with a list of interconnection points of facilities in their State that provide connectivity between (a) a service provider's network elements (or segments) or (b) between a service provider's network and another provider's network, including the Internet backbone. (Collectively, (a) and (b) are ''middle-mile and backbone interconnection points'').

Middle-mile and backbone interconnection points typically enable relatively fast data rates, are built to handle substantial capacities, and may be service-quality assured.

Examples might include: points of interconnection enabling communications between an incumbent local exchange carrier central office and the Internet, between a cable aggregation point (headend) and the Internet, or between a wireless base station and the provider's core network elements that connect to other networks including the Internet.

These data shall be submitted to NTIA as a tab-delimited text file in which each record has the following format:

RECORD FORMAT FOR MIDDLE-MILE AND INTERNET BACKHAUL CONNECTION POINTS DATA FOR EACH PROVIDER

Field	Description	Type	Example
Provider Name	Provider Name	Text	ABC Co.
DBA Name	Doing-business-as name	Text	Superfone, Inc.
FRN	FCC Registration Number	Integer	8402202.
Ownership	Is the facility owned (0) or leased (1)?	Integer	0.

RECORD FORMAT FOR MIDDLE-MILE AND INTERNET BACKHAUL CONNECTION POINTS DATA FOR EACH PROVIDER—Continued

Field	Description	Type	Example
Serving Facility Capacity.	Serving capacity of transport facility (see details below)	Integer	1.
Serving Facility Type	Type of transport facility (1=Fiber; 2=Copper; 3=Hybrid Fiber Coax (HFC); 4=Wireless).	Integer	1.
Latitude	Latitude in decimal degrees	Float	38.884560.
Longitude	Longitude in decimal degrees	Float	−77.028123.
Elevation	Elevation relative to grade to the nearest foot (positive integers indicate above grade, negative below grade).	Integer	−10.

Connections Record Detail:

1. Instructions for providers needing to obtain a FRN can be accessed at *https://fjallfoss.fcc.gov/coresWeb/publicHome.do.*

The capacity of the serving facility should represent the capacity as currently configured and be expressed according to the following reference:

SERVING FACILITY CODES

Data rate code	Interconnection point data rate
1	Multiple T1s and less than 40 mbps.
2	Greater than 40 mbps and less than 150 mbps.
3	Greater than 150 mbps and less than 600 mbps.
4	Greater than or equal to 600 mbps and less than 2.4 gbps.
5	Greater than or equal to 2.4 gbps and less than 10 gbps.
6	Greater than or equal to 10 gbps.

2. Coordinates must be expressed using the WGS 1984 geographic coordinate system.

3. Data for the entire State or territory should be submitted as a single, tab-delimited plain text file named ''middlemile_XX.txt'' where XX is the two-letter postal abbreviation for the State or territory.

4. Community Anchor Institutions

Awardees shall provide NTIA with a list of community anchor institutions in their State, along with the associated information described below.

''Community Anchor Institutions'' consist of schools, libraries, medical and healthcare providers, *public safety entities,* community colleges and other institutions of higher education, and other community support organizations and entities.

The list shall be submitted to NTIA as a tab-delimited text file in which each record has the following format:

RECORD FORMAT FOR COMMUNITY ANCHOR INSTITUTIONS

Field	Description	Type	Example
Name	Institution Name	Text	John Smith Community Center.
Address	Complete address of institution	Text	1401 Constitution Ave., NW., Washington DC 20230
Latitude	Latitude in decimal degrees of institution	Float	38.884560.
Longitude	Longitude in decimal degrees of institution	Float	−77.028123.
Category	Category of institution (see details below for category codes)	Integer	2.
Broadband Service?	Does institution subscribe to broadband service at location?	Text	Y.
Technology of Transmission.	Category of technology used for the provision of broadband service to the institution (see details following Part 1(a) for codes).	Integer	10.
Advertised Downstream Service Speed.	Speed tier code for the downstream advertised data transfer throughput rate associated with the service that the institution receives (see details following Part 1(a) for codes).	Integer	8.
Advertised Upstream Service Speed.	Speed tier code for the upstream data transfer throughput rate associated with the service that the institution receives (see details following Part 1(a) for codes).	Integer	8.

The category of each Community Anchor Institution should be expressed according to the following reference:

COMMUNITY ANCHOR INSTITUTION CATEGORY CODES

Category code	Category
1	School—K through 12.
2	Library.
3	Medical/healthcare.
4	Public safety.
5	University, college, other post-secondary.
6	Other community support—government.
7	Other community support—non-governmental.

Appendix B: Policy Justification

As discussed in the Notice of Funds Availability (Notice) for the State Broadband Data Program, dated July 1, 2009, NTIA, the FCC, and the RUS cosponsored a series of public meetings and released a Request for Information (RFI) to initiate public outreach about the current availability of broadband service in the United States and ways in

which the availability of broadband service could be expanded.[36]

The RFI requested the submission of information on a broad range of topics including topics related to broadband mapping, the American Recovery and Reinvestment Act (Recovery Act) and the Broadband Data Improvement Act (BDIA). In response to the RFI and the public meetings, NTIA received over 1,000 comments from institutions and individuals on the broadband initiatives funded by the Recovery Act and over 200 comments relating to broadband mapping.[37]

The comments relating to broadband mapping included comments regarding: (1) The information that should be included on the national broadband map; (2) the level of geographic or other granularity the national broadband map should provide; (3) whether there are State or other mapping programs that provide models for the statewide inventory grants; (4) the information States should collect as conditions of receiving statewide inventory grants; and (5) the technical specifications that should be required of grantees to ensure that statewide inventory maps can be efficiently included in a national broadband map.

Map Information. In the RFI, NTIA requested additional information regarding the elements that the national broadband map should include.[38] NTIA also examined mapping methodologies employed at the State level and consulted with the Federal Communications Commission (FCC) to determine what data elements should be included in a national standard that would be applied to the collection of broadband mapping related data by awardees under this Program so as to better ensure comprehensiveness, cohesiveness and uniformity in the national broadband map.[39]

NTIA finds that the data elements contained in the *Technical Appendix* attached to the Notice must be collected by each awardee under this Program and that such data must be provided to NTIA pursuant to the terms of the Notice. To the greatest extent possible, at every address, the type and speed of broadband service will be provided. For providers of wireless broadband service, the spectrum used for the provision of service will be provided. If the applicable broadband service provider so chooses, the provider's identity will also be available, otherwise the map will simply display that an anonymous provider utilizing a particular type of technology is providing service to a location. Furthermore, to the extent possible, the service areas of individual providers will be aggregated with other providers of the same technology type. NTIA has made this determination based on its review of the comments, an examination of mapping methodologies employed at the State level, and consultation with the FCC.

Though collected under this Program, data concerning the Average Revenue Per User (ARPU) and data regarding the type, technical specification, or location of infrastructure owned, leased, or used by a broadband service provider will not be displayed on the public national broadband map.[40] The above paragraphs notwithstanding, if provider consent is granted, NTIA may display the above provider-specific information on the national broadband map.

In addition to the above broadband-related information, the national broadband map may display a wide range of additional, economic, and demographic data derived from other sources. Such data, however, are not the subject of the Notice.

State broadband maps developed pursuant to awards under this Program should display, at a minimum, technology type and speed, subject to the restrictions contained herein, including those within the section entitled ''Confidential Information'' of the Notice. Nothing in the Notice, however, is intended to otherwise limit the data elements that States may include in their State broadband maps or the format that they use to display such data elements, and States are encouraged to adapt their maps to fit their individual State needs.[41]

Level of Granularity. NTIA's RFI included a question regarding the level of geographic or other granularity at which the national broadband map should display information on broadband service.[42] Commenters presented a range of suggestions for the appropriate level of granularity.[43]

[36] *See* Notice: American Recovery and Reinvestment Act of 2009 Broadband Initiatives, 74 FR 8914 (Feb. 27, 2009).

[37] Agendas, transcripts, and presentations from each meeting are available on NTIA's Web site at *http://www.ntia.doc.gov/broadbandgrants/meetings.html.* All public comments in Docket No. 090309298–9299–01 are on file with NTIA and may be viewed on NTIA's Web site at *http://www.ntia.doc.gov/broadbandgrants/comments.*

[38] 74 FR at 10718.

[39] Commenters offered a range of comments about what data the map should include: State of North Dakota at 9 (Apr. 14, 2009) (types of technology used by providers); National Association of Telecommunications Officers and Advisors (NATOA) at 24 (Apr. 13, 2009) (actual and offered speeds and prices for a particular area); Joint Comments of Massachusetts Broadband Institute, Massachusetts Department of Telecommunications and Cable, and Vermont Department of Public Service (Joint Comments) at 7 (Apr. 14, 2009) (current availability of service, adoption rates, and service provider identity); The Telecommunications Industry Association (TIA) at 19 (Apr. 10, 2009) (location of infrastructure points); Pennsylvania Governor's Office of Administration (Apr. 13, 2009) (location of water and cell towers); Big Think Strategies at 9 (Apr. 13, 2009) (location of ''meet-me-backbone-points''); University of Nebraska at 4 (Apr. 13, 2009) (both dark and lit fiber); FiberTower Corporation at 13 (Apr. 13, 2009) (locations of broadband enabled buildings); County Office of Economic Development, Garrett County, MD at 13 (trunking locations/nodes); Wireless Internet Service Providers Associations (WISPA) at 13 (Apr. 13, 2009) (point-of-presence locations); Public Interest Spectrum Coalition at 10 (Apr. 13, 2009) (spectrum frequency/signal strength by time of year/day); ZeroDivide at 13 (Apr. 13, 2009) (adoption rates in new broadband deployment areas); RF Check, Inc. at 1 (GPS mapping); City of Boston at 9 (Apr. 13, 2009) (data transfer rates); Association of Public Safety Communications Officials (APCO) at 13 (Apr. 13, 2009) (network interoperability); FiberTower Corporation at 4–6 (Apr. 14, 2009) (bandwidth availability for backhaul); CostQuest/LinkAmerica Alliance at 10 (RF propagation and antennae direction); FiberTower Corporation at 10 (middle and last mile bandwidth capacity); CostQuest/LinkAmerica Alliance at 12 (topography features and location of facilities); Rural Internet and Broadband Policy Group at 9, 10 (traffic network architecture); CostQuest/LinkAmerica Alliance at 10 (social demographic data); National Organization of Black County Officials (NCBM *et al.*) at 3 (Apr. 14, 2009) (race); NCBM *et al.* at 3 (gender, income, age, education, and difference in language(s)); Rural and Tribal Systems Development (RTSD) at 17 (Apr. 14, 2009) (political subdivisions); NCBM *et al.* at 3 (employment status); Space Data at 6 (economically disadvantaged areas); FirstMile.US at 14 (Apr. 10, 2009) (physical and financial accessibility); CostQuest/LinkAmerica Alliance at 10 (location of public technology access and learning centers (schools); Level 3 Communications at 15 (Apr. 13, 2009) (population trends); The People of the State of California and Governor Arnold Schwarzenegger at 42, 46, 48 (Apr. 13, 2009) (subscriber data); CostQuest/LinkAmerica Alliance at 10 (customer class); National Emergency Number Association (NENA) at 16–18 (Apr. 13, 2009) (public safety broadband availability); Intrado Inc. and Intrado Communications Inc. (Intrado) at 10 (Apr. 10, 2009) (PSAP locations); Apex CoVantage at 4 (road segments); Joint Comments at 7 (Apr. 14, 2009) (broadband availability type); CostQuest/LinkAmerica Alliance at 10 (locations of public libraries); Pennsylvania Governor's Office of Administration at 6, 7 (broadband stimulus fund projects); State of Iowa at 7 (Apr. 13, 2009) (rights-of-way); National Association of County and City Health Officials (NACCHO) at 3 (Apr. 13, 2009) (health care facilities); Rural Internet and Broadband Policy Group at 4 (Apr. 13, 2009) (voice and data connectivity rates in tribal areas); Broadpoint Inc. at 3 (Apr. 13, 2009) (offshore economic and business hubs); Stratsoft LLC at 1 (Mar. 23, 2009) (frequency of electrical outages, electrical currents for radios, and usage data).

[40] However, NTIA is considering methods for displaying some pricing data that will be collected through other avenues.

[41] The fact that some data elements have not been included in the technical requirements for the national broadband map, or not made publicly available, does not indicate that those elements may not be useful for individual State purposes.

[42] 74 FR at 10718.

[43] The majority of commenters supported street address level granularity. *See, e.g.,* Vermont Center for Geographical Information (VCGI) at 2 (Mar. 24, 2009). There was also support for data collection at lower levels of granularity. *See, e.g.,* City of Beverly Hills at 3 (Apr. 10, 2009) (census block); Lehigh

Based on its review of the comments, examination of mapping methodologies currently employed at the State level, and consultation with the FCC, NTIA finds that data at the address level, or as close to the address level as practicable considering the technology type being employed, as set out in the *Technical Appendix,* should be collected by each awardee under this Program and that such data must be provided to NTIA pursuant to the terms of the Notice. State broadband maps developed pursuant to awards under this Program should display data at the address level, or as close to the address level as practicable considering the technology type being employed and as provided more fully in the *Technical Appendix.*

State Models. NTIA has gathered information from a variety of sources, including mapping experts from many States. Additionally, commenters provided suggestions on what maps NTIA should use as models for the national broadband map.[44] After careful consideration and consultation with the FCC and other agencies, determined that none of the suggested State map models contain all of the data sets necessary for the national broadband map, but may prove to be instructive and the source of valuable ideas. The information required under the Notice and *Technical Appendix,* however, is the principal source of information for the national map and guidance for applicants under this Program.

State Collection of Mapping Information. State participation is critical to the national broadband mapping effort. Commenters expressed a range of opinions on the information that States should be required to collect as a condition of receiving statewide inventory grants.[45] In order to promote the efficient creation of the State and national broadband maps, NTIA and RUS will require that broadband internet service providers that apply for infrastructure grants under BTOP and RUS' Broadband Initiatives Program (BIP) agree to provide the data that awardees under this Program are required to collect pursuant to the *Technical Appendix.* NTIA and RUS find that the BIP/BTOP program's incentive structure should complement the goals of the State and national mapping efforts and this requirement will further facilitate data collection.

Technical Specifications of State Maps. The BDIA is silent on the technical specifications that should be included in each State map. NTIA sought comment in the RFI on the specifications that should be required of State Broadband Data Program grantees to ensure that the data collected at the State level can be efficiently incorporated into the national broadband map.[46] As stated above, NTIA also consulted with the FCC and examined mapping methodologies currently employed at the State level, regarding the technical specifications with which awardees should comply in composing their maps with program funds.

In response to the RFI, commenters provided varying insights on the data sets that should be displayed,[47] and the technical format of the information provided.[48] NTIA has determined to require that data be collected as specified in the *Technical Appendix* attached hereto.

[FR Doc. E9–16103 Filed 7–7–09; 8:45 am]

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Valley Cooperative Telephone Association at 6 (Apr. 13, 2009) (census tract level per FCC form 477 data collection); Traverse Technologies, Inc. at 2 (Mar. 25, 2009) (providers' customer service areas).

[44] *See, e.g.,* CostQuest/LinkAmerica Alliance at 17 (Alabama map); State of Arizona Government Information Technology Agency at 9 (Arizona Map); City and County of San Francisco at 25 (Apr. 13, 2009) (California Map); State of Iowa at 7 (Hawaii map); Oakland County, Michigan at 7 (Illinois Map); ConnectKentucky at 3 (Kentucky Map); Joint Comments at 8, 13 (Massachusetts Map); Diane Wells at 1, 2 (Apr. 13, 2009) (Minnesota Map); State of Iowa at 7 (Missouri Map); Joint Response of the New York State CIO *et al.* at 4 (New York Map); Pennsylvania Governor's Office of Administration at 8 (North Carolina Map); Pennsylvania Governor's Office of Administration at 8 (Pennsylvania Map); Scott County Mayor Ricky A. Keeton at 1 (Apr. 13, 2009) (Tennessee Map); Stratrum Broadband at 19 (Mar. 31, 2009) (Vermont Map); City of Boston at 9 (Virginia Tech Map); ViaStat, Inc. at 14, 15 (Apr. 13, 2009) (Australia Map); City of Boston at 9 (New Zealand Map).

[45] The RFI included a question regarding the specific information the States should collect as conditions of receiving statewide inventory grants (74 FR 10718). Most commenters agreed that States should collect information. *See, e.g.,* WISPA at 13. There was disagreement over whether State data collection should be a condition to qualify for grants. *See, e.g.,* Windstream Communications, Inc. at 27. Some commenters did not think providers should be required to provide mapping data. *See, e.g.,* Independent Telephone and Telecommunications Alliance at 35. Some commenters recommended that providers be required to submit data. *See, e.g.,* State of Missouri/Missouri Public Services Commission at 12.

[46] 74 FR at 10718.

[47] NTIA received comments on the technical specifications of the map including the following: Triangle J Council of Governments Cable Broadband Consortium at 15 (Apr. 13, 2009) (NTIA should establish a standard template, such as a database directory, by which information is submitted); CostQuest/LinkAmerica Alliance at 18 (NTIA should clearly define certain data sets such as: Coverage areas, speed and service attributes, quality of service data, technologies, infrastructure elements, demand and demographic data price, deployment costs); The People of the State of California and Governor Arnold Schwarzenegger at 46 (NTIA should establish definitions for address); National Tribal Telecommunications Association at 3, 4 (NTIA should show customer class (residential, business, etc.); Joint Response of the New York State CIO *et al.* at 11 (data should allow for multiple demographic overlays); Apex CoVantage at 4 (link the customer database to the provider database and link the political data to census data); SEDA—Council of Governments at 6 (searchable by address and display in graphical rather than tabular format).

[48] Link America Alliance at 17 (NTIA should follow Federal Geospatial Data Content standards that included geographic and topographic information); University of Nebraska at 4 (NTIA should require GIS software compatibility); The People of the State of California and Governor Arnold Schwarzenegger at 47 (NTIA should create Metadata (data about the data) according to Federal Geospatial Data Content (FGDC) standards to be generated after geo-coding); State of Arizona Government Information Technology Agency at 9 (NTIA should create Metadata (data about the data) according to ESRI mapping standards); CostQuest/Link America Alliance at 18, 19 (maps and features (data layers) should be collected in accordance with Open Geospatial Consortium (OGC) standards for geospatial data).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XQ00

Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Harbor Activities Related to the Delta IV/Evolved Expendable Launch Vehicle at Vandenberg Air Force Base, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from United Launch Alliance (ULA) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting *Delta Mariner* operations, cargo unloading activities, harbor maintenance dredging, and kelp habitat mitigation activities related to the Delta IV/Evolved Expendable Launch Vehicle (Delta IV/EELV) at south Vandenberg Air Force Base, CA (VAFB). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS requests comments on its proposal to authorize ULA to take, by Level B harassment only, small numbers of two species of pinnipeds at south VAFB beginning August, 2009.

DATES: Comments and information must be received no later than August 7, 2009.

ADDRESSES: Comments on the application should be addressed to

Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *PR1.0648–XQ00@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.

All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see FOR FURTHER INFORMATION CONTACT), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody or Candace Nachman, Office of Protected Resources, NMFS, (301) 713–2289, or Monica DeAngelis, NMFS Southwest Region, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental taking shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [ALevel A harassment@]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [''Level B harassment''].

Section 101(a)(5)(D) of the MMPA establishes a 45–day time limit for NMFS= review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Not later than 45 days after the close of the public comment period, if the Secretary makes the findings set forth in Section 101(a)(5)(D)(i), the Secretary shall issue or deny issuance of the authorization with appropriate conditions to meet the requirements of clause 101(a)(5)(D)(ii).

Summary of Request

On June 5, 2009, NMFS received an application from ULA requesting an authorization for the harassment of small numbers of Pacific harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), and northern elephant seals (*Mirounga angustirostris*) incidental to harbor activities related to the Delta IV/EELV, including: transport vessel operations, cargo movement activities, harbor maintenance dredging, and kelp habitat mitigation operations. These activities will support Delta IV/EELV launch activities from the Space Launch Complex at VAFB.

NMFS has issued Incidental Harassment Authorizations (IHAs) to The Boeing Company, now ULA, on May 15, 2002 (67 FR 36151, May 23, 2002), May 20, 2003 (68 FR 36540, June 18, 2003), May 20, 2004 (69 FR 29696, May 25, 2004), May 23, 2005 (70 FR 30697, May 27, 2005), June 20, 2006 (71 FR 36321, June 26, 2006), June 21, 2007 (72 FR 34444, June 22, 2007), and August 19, 2008 (73 FR 49649, August 22, 2008) each for a one-year period. ULA did not conduct any dredging activities between 2003 and 2008, and accordingly, was not required to conduct any monitoring activities. For the 2008 IHA, which expires on August 18, 2009, ULA expects to commence dredging operations in July, 2009. ULA will submit a monitoring report 120 days after the expiration of the 2008 IHA.

Description of the Specified Activity

Delta Mariner off-loading operations and associated cargo movements will occur a maximum of three times per year. The activities will take place within the harbor located within the VAFB, approximately 2.5 miles (mi) (4.02 kilometers (km) south of Point Arguello, CA and approximately 1 mi (1.61 km) south of the nearest marine mammal pupping site (i.e., Rocky Point).

Delta Mariner Operations

The *Delta Mariner* is a 312–feet (ft) (95.1–meter (m)) long, 84–ft (25.6–m) wide steel hull ocean-going vessel capable of operating at an 8–ft (2.4–m) draft. The vessel will enter the harbor stern first, during daylight hours at high tide, approaching the wharf at less than 0.75 knot. At least one tugboat will always accompany the *Delta Mariner* during visits to the VAFB harbor. Departure will occur under the same conditions.

Sources of noise from the *Delta Mariner* include ventilating propellers used for maneuvering the vessel into position and a brief sound from the cargo bay door when it becomes disengaged.

Harbor Maintenance Dredging

To accommodate the *Delta Mariner*, the harbor will need to be dredged, removing up to 5,000 cubic yards of sediment per dredging. Dredging will involve the use of heavy equipment, including a clamshell dredge, dredging crane, a small tug, dredging barge, dump trucks, and a skip loader. ULA estimates that the noise levels emanating from within 50 ft of the dredging and construction equipment would range from 56 to 93 decibels (dB) (A-weighted) (re 20 FPascals at 1–m). Thus, there is the potential that an animal hauled out on the beach or breakwater could hear the dredging activities. Dredge operations, from set-up to tear-down, would continue 24–hours a day for three to five weeks. Sedimentation surveys have shown that initial dredging indicates that maintenance dredging should be required annually or twice per year, depending on the hardware delivery schedule.

A more detailed description of the work proposed for 2009–2010 is contained in the application, which is available upon request (see **ADDRESSES**), and in the Final U.S. Air Force Environmental Assessment for Harbor Activities Associated with the Delta IV Program at Vandenberg Air Force Base (ENSR International, 2001).

Cargo Movement Activities

The Delta IV/EELV launch vehicle is comprised of a common booster core (CBC) and other mechanical elements. Removal of the CBC from the vessel requires the use of an elevating platform transporter (EPT). ULA measured the EPT's sound levels within 20 ft of the exhaust pipe with the engine running at mid-speed and observed sound levels of 85 dB (re 20 FPascals at 1–m) (Acentech, 1998). The removal procedure requires two short (approximately 1/3 second) beeps of the horn prior to starting the ignition. The sound level of the EPT horn ranged from 62 to 70 dB A-weighted at 200 ft (60.9 m) away, and 84 to 112 dB A-weighted at 25 ft (7.6 m) away.

For cargo other than the CBC, ULA will use a standard diesel truck tractor to offload containers containing flight hardware items from the *Delta Mariner*. The tractor would generate a sound level of approximately 87 dB A-weighted at 50 ft (15.2 m) while in operational mode. Total docking and cargo movement activities is estimated to last approximately no more than 18 hours in good weather.

Marine Mammals Affected by the Activity

The marine mammal species likely to be harassed incidental to harbor activities at south VAFB are the Pacific harbor seal and the California sea lion.

Pacific Harbor Seals

The marine mammal species likely to be harassed incidental to harbor activities at south VAFB are the Pacific harbor seal and the California sea lion. The most recent minimum population estimate of Pacific harbor seals in California is 31,600 seals (Carretta *et al.*, 2008). Carretta *et al.*, (2008) report that net production rates appeared to decrease from 1982 to 1994 and hypothesized that the decrease occurred at the same time as a decrease in human-caused mortality and may indicate that the population has reached its environmental carrying capacity.

The total population of harbor seals on VAFB is now estimated to be 1,118 (maximum of 500 seals hauled out at one time on south VAFB) based on sighting surveys and telemetry data (Thorson, 2001). The daily haul-out behavior of harbor seals along the south VAFB coastline is primarily dependent on time of day. The highest number of seals haul-out at south VAFB between 1100 through 1600 hours. In addition, haul-out behavior at all sites seems to be influenced by environmental factors such as high swell, tide height, and wind. The combination of all three may prevent seals from hauling out at most sites. The number of seals hauled out at a site can vary greatly from day to day based on environmental conditions. Harbor seals occasionally haul out at a beach 250 ft (76.2 m) west of the south VAFB harbor and on rocks outside the harbor breakwater where ULA will be conducting *Delta Mariner* operations, cargo loading, dredging activities, and reef enhancement.

The maximum number of seals present during the 2001 dredging of the harbor was 23 (averaging 7 per observation period), and the maximum number hauled out during the 2002 wharf modification activities was 43, averaging 21 per day when tidal conditions were favorable for hauling out. Dredging and reef enhancement did not occur from 2003–2008.

Several factors affect the seasonal haul-out behavior of harbor seals including environmental conditions, reproduction, and molting. Harbor seal numbers at VAFB begin to increase in March during the pupping season (March to June) as females spend more time on shore nursing pups. The number of hauled-out seals is at its highest during the molt, which occurs from May through July. During the molting season, tagged harbor seals at VAFB increased their time spent on shore by 22.4 percent; however, all seals continued to make daily trips to sea to forage. Molting harbor seals entering the water because of a disturbance are not adversely affected in their ability to molt and do not endure thermoregulatory stress. During pupping and molting season, harbor seals at the south VAFB sites expand into haul-out areas that are not used the rest of the year. The number of seals hauled out begins to decrease in August after the molt is complete and reaches the lowest number in late fall and early winter.

California Sea Lions

During the wharf modification activity in June-July 2002, California sea lions were observed hauling out on the breakwater in small numbers (up to 6 individuals). Although this is considered to be an unusual occurrence and is possibly related to fish schooling in the area, ULA included sea lions in the request.

California sea lions range from British Columbia to Mexico. The most recent population estimate for the California sea lions range is 238,000 (Caretta *et al.*, 2008). Between 1975 and 2001, the population growth rate was 5.4–6.1 percent. A 1985–1987 population survey indicated that most individuals on the Northern Channel Islands were on San Miguel Island (SMI), with the population ranging from 2,235 to over 17,000.

The largest numbers of California sea lions in the VAFB vicinity occur at Lion Rock, 0.4 mi (0.64 km) southeast of Point Sal. This area is approximately 1.5 mi (2.41 km) north of the VAFB boundary. ULA notes that they have observed at least 100 sea lions during any season at this site. The Point Arguello beaches and the rocky ledges of South Rocky Point on south VAFB are haulout areas that may be used by California sea lions. In 2003, at least 145 sea lions were observed at Rocky Point, including five pups that did not survive due to abandonment shortly after birth. This was thought to be an El Nino effect, as there had never been any previously reported sea lion births at VAFB (Thorson, 2003). Each year, small groups of sea lions have been observed heading south along the VAFB coastline in April and May (Tetra Tech, 1997). Starting in August, large groups of sea lions can be seen moving north, in groups varying in size from 25 to more than 300 (Roest, 1995). This concurs with established migration patterns (Reeves *et al.*, 1992; Roest, 1995). Juvenile sea lions can be observed hauled-out with harbor seals along the South Base sites from July through September (Tetra Tech, 1997). Starving and exhausted sub-adult sea lions are fairly common on central California beaches during the months of July and August (Roest, 1995).

During the breeding season, most California sea lions inhabit southern California and Mexico. Rookery sites in southern California are limited to SMI and the southerly Channel Islands of San Nicolas, Santa Barbara, and San Clemente. Breeding season begins in mid-May, occurring within 10 days of arrival at the rookeries. Molting occurs gradually over several months in the late summer and fall. Because the molt is not catastrophic, the sea lions can enter the water to feed.

Male California sea lions migrate annually. In the spring they migrate southward to breeding rookeries in the Channel Islands and Mexico, then migrate northward in the late summer following breeding season. Females appear to remain near the breeding rookeries. The greatest population on

land occurs in September and October during the post-breeding dispersal, although many of the sea lions, particularly juveniles and sub-adult and adult males, may move north away from the Channel Islands.

Other Marine Mammals

Other marine mammal species are rare to infrequent along the south VAFB coast during certain times of the year and are unlikely to be harassed by ULA's activities. These four species are: the northern elephant seal, the northern fur seal (*Callorhinus ursinus*), Guadalupe fur seal (*Arctocephalus townsendi*), and Steller sea lion (*Eumetopias jubatus*). Northern elephant seals may occur on VAFB but do not haul out in the harbor area. Northern fur seals, Guadalupe fur seals, and Steller sea lions occur along the California coast and Northern Channel Islands but are not likely to be found on VAFB. Descriptions of the biology and distribution of these species can be found in the NMFS Stock Assessment Reports at *http://www.nmfs.noaa.gov/pr/sars/*.

Potential Effects of Activities on Marine Mammals

Acoustic and visual stimuli generated by the use of heavy equipment during the *Delta Mariner* off-loading operations, dredging, and kelp habitat mitigation and the increased presence of personnel, may cause short-term disturbance to harbor seals and California sea lions hauled out on the beach and rocks near south VAFB harbor. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities. Based on the measured sounds of construction equipment, such as might be used during ULA's activities, sound level intensity decreases proportional to the square root of the distance from the source. A dredging crane at the end of the dock producing 88 dB A-weighted of noise would be approximately 72 dB A-weighted at the nearest beach or the end of the breakwater, roughly 250 ft (76.2 m) away. The EPT produces approximately 85 dB A-weighted, measured less than 20 ft (6 m) from the engine exhaust, when the engine is running at mid speed. The EPT operation procedure requires two short beeps of the horn (approximately 1/3 of a second each) prior to starting the ignition. Sound level measurements for the horn ranged from 84–112 dB A-weighted at 25 ft (7.6 m) away and 62–70 dB A-weighted at 200 ft (61 m) away. The highest measurement was taken from the side of the vehicle where the horn is mounted. Ambient background noise measured approximately 250 ft (76.2 m) from the beach was estimated to be 35–48 dBA (Acentech, 1998; EPA, 1971).

Pinnipeds sometimes show startle reactions when exposed to sudden brief sounds. An acoustic stimulus with sudden onset (such as a sonic boom) may be analogous to a ''looming'' visual stimulus (Hayes and Saif, 1967), which may elicit flight away from the source (Berrens *et al.*, 1988). The onset of operations by a loud sound source, such as the EPT during CBC off-loading procedures, may elicit such a reaction. In addition, the movements of cranes and dredges may represent a ''looming'' visual stimulus to seals hauled out in close proximity. Seals and sea lions exposed to such acoustic and visual stimuli may either exhibit a startle response and/or leave the haul-out site.

According to the MMPA and NMFS' implementing regulations, if harbor activities disrupt the behavioral patterns of harbor seals or sea lions, these activities would take marine mammals by Level B harassment. In general, if the received level of the noise stimulus exceeds both the background (ambient) noise level and the auditory threshold of the animals, and especially if the stimulus is novel to them, there may be a behavioral response. The probability and degree of response will also depend on the season, the group composition of the pinnipeds, and the type of activity in which they are engaged. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering (i.e., Level B harassment) and would not cause injury or mortality to marine mammals. On the other hand, startle and alert reactions accompanied by large-scale movements, such as stampedes into the water of hundreds of animals, may rise to the degree of Level A harassment and could result in injury of individuals. In addition, such large-scale movements by dense aggregations of marine mammals or at pupping sites could potentially lead to takes by injury or death. However, there is no potential for large-scale movements leading to serious injury or mortality near the south VAFB harbor because, on average, the number of harbor seals hauled out near the site is less than 30 individuals, and there is no pupping at nearby sites. The effects of the harbor activities are expected to be limited to short-term startle responses and localized behavioral changes.

According to the June 2002 dock modification construction report (ENSRI, 2002), the maximum number of harbor seals hauled out each day ranged from 23 to 25 animals. There were 15 occasions in which construction noise, vehicle noise, or noise from a fishing boat caused the seals to lift their heads. Flushing only occurred due to fishing activities, which were unrelated to the construction activities. The sea lions were less reactive to the construction noise than the harbor seals. None of the construction activities caused any of the sea lions to leave the jetty rocks, and there was only one incident of a head alert reaction.

The report from the December 2002 dredging activities show that the number of Pacific harbor seals ranged from zero to 19, and that California sea lions did not haul out during the monitoring period. On 10 occasions, harbor seals showed head alerts, although two of the alerts were for disturbances that were not related to the project. No harbor seals flushed during the activities on the dock.

For a further discussion of the anticipated effects of the planned activities on harbor seals in the area, please refer to the application, NMFS' 2005 Environmental Assessment (EA), and the United States Air Force's (USAF) 2001 Final EA.

Numbers of Marine Mammals Expected to be Harassed

ULA estimates that a maximum of 43 harbor seals per day may be hauled out near the south VAFB harbor, with a daily average of 21 seals sighted when tidal conditions were favorable during previous dredging operations in the harbor. Considering the maximum and average number of seals hauled out per day, assuming that the seals may be seen twice a day, and using a maximum total of 73 operating days in 2009–2010, NMFS estimates that a maximum of 767 to 1,570 Pacific harbor seals may be subject to Level B harassment out of a total estimated population of 31,600. These numbers are small relative to this population size (2.4–5 percent).

During wharf modification activities, a maximum of six California sea lions were seen hauling out in a single day. Based on the above-mentioned calculation, NMFS believes that a maximum of 219 California sea lions may be subject to Level B harassment out of a total estimated population of 238,000. These numbers are small relative to this population size (less than 0.1 percent).

Up to 10 northern elephant seals (because they may be in nearby waters) may be subject to Level B harassment out of a total estimated population of 124,000 in 2005 (Carretta *et al.*, 2008).

These numbers are small relative to this population size (less than 0.01 percent).

Possible Effects of Activities on Marine Mammal Habitat

ULA does not anticipate any loss or modification to the habitat used by Pacific harbor seals or California sea lions that haul out near the south VAFB harbor. The harbor seal and sea lion haul-out sites near south VAFB harbor are not used as breeding, molting, or mating sites; therefore, it is not expected that the activities in the harbor will have any impact on the ability of Pacific harbor seals or California sea lions in the area to reproduce.

ULA anticipates unavoidable kelp removal during dredging. This habitat modification will not affect the marine mammal habitat. However, ULA will mitigate for the removal of kelp habitat by placing 150 tons of rocky substrate in a sandy area between the breakwater and the mooring dolphins to enhance an existing artificial reef. This type of mitigation was implemented by the Army Corps of Engineers following the 1984 and 1989 dredging. A lush kelp bed adjacent to the sandy area has developed from the efforts. The substrate will consist of approximately 150 sharp-faced boulders, each with a diameter of about 2 ft (0.61 m) and each weighing about 1 ton (907 kg). The boulders will be brought in by truck from an off-site quarry and loaded by crane onto a small barge at the wharf. The barge is towed by a tugboat to a location along the mooring dolphins from which a small barge-mounted crane can place them into the sandy area. ULA plans to perform the reef enhancement in conjunction with the next maintenance dredging event in order to minimize cost and disturbances to animals. Noise will be generated by the trucks delivering the boulders to the harbor and during the operation of unloading the boulders onto the barges and into the water.

Proposed Mitigation Measures

To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities, ULA proposes to undertake the following marine mammal mitigating measures:

(1) If activities occur during nighttime hours, lighting will be turned on before dusk and left on the entire night to avoid startling pinnipeds at night.

(2) Activities will be initiated before dusk.

(3) Construction noises must be kept constant (i.e., not interrupted by periods of quiet in excess of 30 minutes) while pinnipeds are present.

(4) If activities cease for longer than 30 minutes and pinnipeds are in the area, start-up of activities will include a gradual increase in noise levels.

(5) A NMFS-approved marine mammal observer will visually monitor the harbor seals on the beach adjacent to the harbor and on rocks for any flushing or other behaviors as a result of ULA's activities (see Monitoring).

(6) The *Delta Mariner* and accompanying vessels will enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks, and the vessel will reduce speed to 1.5 to 2 knots (1.5–2.0 nm/hr; 2.8–3.7 km/hr) once the vessel is within 3 mi (4.83 km) of the harbor. The vessel will enter the harbor stern first, approaching the wharf and mooring dolphins at less than 0.75 knot (1.4 km/hr).

(7) As alternate dredge methods are explored, the dredge contractor may introduce quieter techniques and equipment.

Proposed Monitoring Measures

As part of its 2002 application, Boeing, now ULA, provided a proposed monitoring plan for assessing impacts to harbor seals from the activities at south VAFB harbor and for determining when mitigation measures should be employed. NMFS proposes the same plan for the 2009 IHA.

A NMFS-approved and VAFB-designated biologically trained observer will monitor the area for pinnipeds during all harbor activities. During nighttime activities, the harbor area will be illuminated, and the monitor will use a night vision scope. Monitoring activities will consist of:

(1) Conducting baseline observation of pinnipeds in the project area prior to initiating project activities.

(2) Conducting and recording observations on pinnipeds in the vicinity of the harbor for the duration of the activity occurring when tides are low enough for pinnipeds to haul out (2 ft, 0.61 m, or less).

(3) Conducting post-construction observations of pinniped haul-outs in the project area to determine whether animals disturbed by the project activities return to the haul-out.

Monitoring results from previous years of these activities have been reviewed and incorporated into the analysis of potential effects in this document.

Proposed Reporting

ULA will notify NMFS two weeks prior to initiation of each activity. After each activity is completed, ULA will provide a report to NMFS within 120 days. This report will provide dates, times, durations, and locations of specific activities, details of pinniped behavioral observations, and estimates of numbers of affected pinnipeds and impacts (behavioral or other). In addition, the report will include information on the weather, tidal state, horizontal visibility, and composition (species, gender, and age class) and locations of haul-out group(s). In the unanticipated event that any cases of pinniped injury or mortality are judged to result from these activities, this will be reported to NMFS immediately.

Negligible Impact Determination

NMFS has preliminarily determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting a dredging program within VAFB may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B Harassment) of small numbers of certain species of marine mammals. While behavioral and avoidance reactions may be made by these species in response to the resultant noise from the dredging operations, these behavioral changes are expected to have a negligible impact on the affected species and stocks of marine mammals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the area of dredging operations, the number of potential harassment takings is estimated to be relatively small in light of the population size.

In addition, no take by death and/or serious injury is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the required mitigation measures described in this document.

Endangered Species Act (ESA)

This action will not affect species listed under the ESA that are under NMFS' jurisdiction. VAFB formally consulted with the U.S. Fish and Wildlife Service in 1998 on the possible take of southern sea otters during Boeing's, now ULA, harbor activities at south VAFB. A Biological Opinion was issued in August 2001, which concluded that the EELV Program is not likely to jeopardize the continued existence of the southern sea otter, and no injury or mortality is expected. The activities covered by this IHA are analyzed in that Biological Opinion, and this IHA does not modify the action in a manner that was not previously analyzed.

National Environmental Policy Act

In 2001, the USAF prepared an EA for Harbor Activities Associated with the Delta IV Program at VAFB. In 2005, NMFS prepared an EA augmenting the information contained in the USAF EA and issued a Finding of No Significant Impact on the issuance of an IHA for Boeing's, now ULA, harbor activities in accordance with section 6.01 of the NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999). ULA's proposed activities and impacts for 2009–2010 are expected to be within the scope of NMFS' 2005 EA and FONSI.

Preliminary Conclusions

Based on the preceding information, and provided that the proposed mitigation and monitoring are incorporated, NMFS has preliminarily concluded that the proposed activity will incidentally take, by level B behavioral harassment only, small numbers of marine mammals. There is no subsistence harvest of marine mammals in the proposed research area; therefore, the provision relating to impacts on certain subsistence activities is not implicated by this proposed action. No take by Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures proposed in this document.

Northern fur seals, Guadalupe fur seals, and Steller sea lions are unlikely to be found in the area and, therefore, will not be affected. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near south VAFB harbor.

Proposed Authorization

NMFS proposes to issue an IHA to ULA for the Delta IV/EELV Program during August 2009 to August 2010, provided that the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 2, 2009.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–16070 Filed 7–7–09; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Extension of Approval of Information Collection; Comment Request—Safety Standard for Automatic Residential Garage Door Operators

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed request for extension of approval of a collection of information from manufacturers and importers of residential garage door operators. The collection of information consists of testing and recordkeeping requirements in certification regulations implementing the Safety Standard for Automatic Residential Garage Door Operators (16 CFR Part 1211). The Commission will consider all comments received in response to this notice before requesting approval of this extension of a collection of information from the Office of Management and Budget (OMB).

DATES: The Office of the Secretary must receive written comments not later than September 8, 2009.

ADDRESSES: Written comments should be captioned ''Residential Garage Door Operators'' and e-mailed to the Office of the Secretary at *cpsc-os@cpsc.gov*. Comments may also be sent by facsimile to (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7671 or by e-mail to *lglatz@cpsc.gov*.

SUPPLEMENTARY INFORMATION: In 1990, Congress enacted legislation requiring residential garage door operators to comply with the provisions of a standard published by Underwriters Laboratories to protect against entrapment under provisions of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*). The entrapment protection requirements of UL Standard 325 are codified into the Safety Standard for Automatic Residential Garage Door Operators, 16 CFR Part 1211. Automatic residential garage door operators must comply with the latest edition of the Commission's regulations at 16 CFR Part 1211.

OMB approved the collection of information concerning the Safety Standard for Automatic Residential Garage Door Operators under control number 3041–0125. OMB's most recent approval will expire on October 31, 2009. The Commission now proposes to request an extension of approval without changes of this collection of information.

A. Certification Requirements

Section 203 of Public Law 101–608 requires that UL Standard 325 shall be considered to be a consumer product safety standard under section 9 of the CPSA (15 U.S.C. 2058). Section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a consumer product subject to a consumer product safety standard under the CPSA or similar rule, ban, standard, or regulation under any other act enforced by the Commission to issue a certificate stating that the product complies with all applicable rules, bans, standards or regulations. Section 14(a) of the CPSA also requires that the certificate of compliance must be based on a test of each product or upon a reasonable testing program and specify each such rule, ban, standard or regulation applicable to the product.

Section 14(b) of the CPSA (15 U.S.C. 2063(b)) authorizes the Commission to issue regulations to prescribe a reasonable testing program to support certificates of compliance with a consumer product safety standard under the CPSA or similar rule, ban, standard, or regulation under any other act enforced by the Commission. Section 16(b) of the CPSA (15 U.S.C. 2065(b)) authorizes the Commission to issue rules to require that firms ''establish and maintain'' records to permit the Commission to determine compliance with rules issued under the authority of the CPSA.

On December 22, 1992, the Commission issued rules prescribing requirements for a reasonable testing program to support certificates of compliance with the Safety Standard for Automatic Residential Garage Door Operators (57 FR 60449). These regulations also require manufacturers, importers, and private labelers of residential garage door operators to establish and maintain records to demonstrate compliance with the requirements for testing to support certification of compliance. 16 CFR Part

1211, Subparts B and C. The Commission uses the information compiled and maintained by manufacturers and importers of residential garage door operators to protect consumers from risks of death and injury resulting from entrapment accidents associated with garage door operators. More specifically, the Commission uses this information to determine whether the products produced and imported by those firms comply with the standard. The Commission also uses this information to facilitate corrective action if any residential garage door operators fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

B. Estimated Burden

The Commission staff estimates that about 21 firms are subject to the testing and recordkeeping requirements of the certification regulations. The staff estimates that each respondent will spend 40 hours annually on the collection of information for a total of about 840 hours. The estimated total annual cost to industry is approximately $22,800 based on 840 hours × $27.14 (the average hourly total compensation for sales and office workers in goods-producing industries, Bureau of Labor Statistics, September 2008).

The Commission staff will expend approximately 6 staff months reviewing records required to be maintained for automatic residential garage door operators. The annual cost to the Federal government of the collection of information in these regulations is estimated to be $83,000.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: June 30, 2009.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E9–16009 Filed 7–7–09; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Extension of Approval of Information Collection; Comment Request—Omnidirectional Citizens Band Base Station Antennas

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval of a collection of information from manufacturers and importers of citizens band base station antennas. The collection of information is in regulations implementing the Safety Standard for Omnidirectional Citizens Band Base Station Antennas (16 CFR Part 1204). These regulations establish testing and recordkeeping requirements for manufacturers and importers of antennas subject to the standard. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget (OMB).

DATES: The Office of the Secretary must receive comments not later than September 8, 2009.

ADDRESSES: Written comments should be captioned ''Citizens Band Base Station Antennas'' and e-mailed to the Office of the Secretary at *cpsc-os@cpsc.gov*. Comments may also be sent by facsimile to (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7671 or by e-mail to *lglatz@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

In 1982, the Commission issued the Safety Standard for Omnidirectional Citizens Band Antennas (16 CFR Part 1204) to reduce risks of death and serious injury that may result if an omnidirectional antenna contacts an overhead power line while being erected or removed from its site. The standard contains performance tests to demonstrate that an antenna will not transmit a harmful electric current if it contacts an electric power line with a voltage of 14,500 volts phase-to-ground. Certification regulations implementing the standard require manufacturers, importers, and private labelers of antennas subject to the standard to perform tests to demonstrate that those products meet the requirements of the standard, and to maintain records of those tests. The certification regulations are codified at 16 CFR Part 1204, Subpart B.

The Commission uses the information compiled and maintained by manufacturers, importers, and private labelers of antennas subject to the standard to help protect the public from risks of injury or death associated with omnidirectional citizens band base station antennas. More specifically, this information helps the Commission determine that antennas subject to the standard comply with all applicable requirements. The Commission also uses this information to obtain corrective actions if omnidirectional citizens band base station antennas fail to comply with the standard in a manner which creates a substantial risk of injury to the public.

OMB approved the collection of information in the certification regulations under control number 3041–0006. OMB's most recent extension of approval expires on September 30, 2009. The Commission now proposes to request an extension of approval without change for the collection of information in the certification regulations.

B. Estimated Burden

The Commission staff estimates that about 5 firms manufacture or import citizens band base station antennas subject to the standard. The Commission staff estimates that the certification regulations will impose an average annual burden of about 220 hours on each of those firms. That burden will result from conducting the testing required by the regulations and maintaining records of the results of that testing. The total annual burden imposed by the regulations on manufacturers and importers of citizens

band base station antennas is approximately 1,100 hours.

The hourly wage for the testing and recordkeeping required to conduct the testing and maintain records required by the regulations is about $54.88 (average total compensation for management, professional, and related for all workers, goods-producing industries, Bureau of Labor Statistics, September 2008, for an estimated annual cost to the industry of $60,400.

The Commission staff will expend approximately 40 hours reviewing records required to be maintained for omnidirectional citizens band base station antennas. The annual cost to the Federal government of the collection of information in these regulations is estimated to be $3,200.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: June 30, 2009.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E9–16010 Filed 7–7–09; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Extension of Approval of Information Collection; Comment Request—Electrically Operated Toys and Children's Articles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed extension of approval of a collection of information from manufacturers and importers of certain electrically operated toys and children's articles. The collection of information consists of testing and recordkeeping requirements in regulations entitled ''Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children,'' codified at 16 CFR Part 1505.

The Commission will consider all comments received in response to this notice before requesting an extension of this collection of information from the Office of Management and Budget (OMB).

DATES: The Office of the Secretary must receive written comments not later than September 8, 2009.

ADDRESSES: Written comments should be captioned ''Electrically Operated Toys'' and sent by e-mail to *cpsc-os@cpsc.gov.* Comments may also be sent by facsimile to (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814. *cpsc-os@cpsc.gov.*

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7671 or by e-mail to *lglatz@cpsc.gov.*

SUPPLEMENTARY INFORMATION: In 1973, the Commission issued safety requirements for electrically operated toys and children's articles to protect children from unreasonable risks of injury from electric shock, electrical burns, and thermal burns. These regulations are codified at 16 CFR Part 1505 and were issued under the authority of sections 2 and 3 of the Federal Hazardous Substances Act (15 U.S.C. 1261, 1262).

A. Requirements for Electrically Operated Toys

These regulations are applicable to toys, games, and other articles intended for use by children that are powered by electrical current from a nominal 120 volt circuit. Video games and articles designed primarily for use by adults that may be incidentally used by children are not subject to these regulations.

The regulations prescribe design, construction, performance, and labeling requirements for electrically operated toys and children's articles. The regulations also require manufacturers and importers of those products to develop and maintain a quality assurance program. Additionally, section 1505.4(a)(3) of the regulations requires those firms to maintain records for three years containing information about: (1) The material and production specifications and the description of the quality assurance program required by 16 CFR 1505.4(a)(2); (2) the results of all inspections and tests conducted; and (3) records of sales and distribution.

OMB approved the collection of information requirements in the regulations under control number 3041–0035. OMB's most recent extension of approval expires on September 30, 2009. The Commission now proposes to request an extension of approval for the information collection requirements in the regulations.

The safety need for this collection of information remains. Specifically, if a manufacturer or importer distributes products that violate the requirements of the regulations, the records required by section 1505.4(a)(3) can be used by the firm and the Commission to: (i) Identify specific lots or production lines of products which fail to comply with applicable requirements; and (ii) notify distributors and retailers in the event the products are subject to recall.

B. Estimated Burden

The Commission staff estimates that about 40 firms are subject to the testing and recordkeeping requirements of the regulations. Each one may have an average of ten products each year for which testing and recordkeeping would be required, resulting in approximately 400 records. The Commission staff estimates that the tests required by the regulations can be performed on one product in 16 hours and that recordkeeping can be performed for one product in four hours. Thus, the estimated testing burden hours are 6,400 (16 hours × 400) and the estimated recordkeeping burden hours are 1,600 hours (400 records × 4 hours).

The Commission staff estimates that each firm may spend 30 minutes or less per model on the labeling requirements. Assuming each firm produces 10 new models each year, the estimated labeling burden hours are 200 hours (40 firms × 10 models per firm × 0.5 hours per model = 200 hours) per year. The estimated total burden hours for recordkeeping and labeling are 1,800 hours for all firms (1,600 hours for recordkeeping + 200 hours for labeling).

The CPSC staff estimates that the hourly wage for the time required to perform the required testing and recordkeeping is approximately $54.88

(Bureau of Labor Statistics, All workers, goods-producing industries, management, professional and related September 2008), and the hourly wage for the time required to maintain the labeling requirements is approximately $27.14 (Bureau of Labor Statistics, All workers, goods-producing industries, sales and office September 2008). The annualized total cost to the industry is estimated to be $400,084 (6,400 × $54.88 + 1,800 × $27.14).

The Commission staff will expend less than one staff month reviewing records required to be maintained for electrically operated toys and children's articles. The annual cost to the Federal government of the collection of information in these regulations is estimated to be less than $13,839.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: June 30, 2009.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E9–16011 Filed 7–7–09; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Extension of Approval of Information Collection; Comment Request—Safety Standard for Cigarette Lighters

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed request for an extension of approval of a collection of information from manufacturers and importers of disposable and novelty cigarette lighters. This collection of information consists of testing and recordkeeping requirements in certification regulations implementing the Safety Standard for Cigarette Lighters (16 CFR Part 1210). The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget (OMB).

DATES: The Office of the Secretary must receive written comments not later than September 8, 2009.

ADDRESSES: Written comments should be captioned ''Cigarette Lighters'' and e-mailed to the Office of the Secretary at *cpsc-os@cpsc.gov.* Comments may also be sent by facsimile to (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7671 or by e-mail to *lglatz@cpsc.gov.*

SUPPLEMENTARY INFORMATION: In 1993, the Commission issued the Safety Standard for Cigarette Lighters (16 CFR Part 1210) under provisions of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*) to eliminate or reduce risks of death and burn injury from fires accidentally started by children playing with cigarette lighters. The standard contains performance requirements for disposable and novelty lighters that are intended to make cigarette lighters subject to the standard resist operation by children younger than five years of age.

A. Certification Requirements

Section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a consumer product subject to a consumer product safety standard under the CPSA or similar rule, ban, standard, or regulation under any other act enforced by the Commission to issue a certificate stating that the product complies with all applicable rules, bans, standards or regulations. Section 14(a) of the CPSA also requires that the certificate of compliance must be based on a test of each product or upon a reasonable testing program and specify each such rule, ban, standard or regulation applicable to the product.

Section 14(b) of the CPSA (15 U.S.C. 2063(b)) authorizes the Commission to issue regulations to prescribe a reasonable testing program to support certificates of compliance with a consumer product safety standard under the CPSA or similar rule, ban, standard, or regulation under any other act enforced by the Commission. Section 16(b) of the CPSA (15 U.S.C 2065(b)) authorizes the Commission to issue rules to require that firms ''establish and maintain'' records to permit the Commission to determine compliance with rules issued under the authority of the CPSA.

The Commission has issued regulations prescribing requirements for a reasonable testing program to support certificates of compliance with the standard for cigarette lighters. These regulations require manufacturers and importers to submit a description of each model of lighter, results of surrogate qualification tests for compliance with the standard, and other information before the introduction of each model of lighter in commerce. These regulations also require manufacturers, importers, and private labelers of disposable and novelty lighters to establish and maintain records to demonstrate successful completion of all required tests to support the certificates of compliance that they issue. 16 CFR Part 1210, Subpart B.

The Commission uses the information compiled and maintained by manufacturers, importers, and private labelers of disposable and novelty lighters to protect consumers from risks of accidental deaths and burn injuries associated with those lighters. More specifically, the Commission uses this information to determine whether lighters comply with the standard by resisting operation by young children. The Commission also uses this information to obtain corrective actions if disposable or novelty lighters fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

OMB approved the collection of information in the certification regulations for cigarette lighters under control number 3041–0116. OMB's most recent extension of approval will expire on September 30, 2009. The Commission proposes to request an extension of approval for this collection of information requirements.

B. Estimated Burden

The cost of the rule's testing requirement is the cost of testing, either by the firm or by outside contractors. For the last two complete fiscal years (2007 and 2008) the total number of new lighter models submitted by firms to the CPSC has averaged about 20 per year. During that time, an annual average of 16 firms have submitted new lighter models. If tests are conducted through outside contractors, the cost per test has been estimated at $15,000 to $25,000 each, or $20,000 on average. If 20 total tests are done annually by outside contractors, the estimated cost is $400,000. If tests are conducted in-house, testing each new model is expected to take 90 hours. The total testing time for 20 new models, if conducted in-house, would be approximately 1,800 hours. Based on the average hourly total compensation of $54.88 (for management, professional, and related occupations in goods-producing industries, Bureau of Labor Statistics, September, 2008), the total industry cost of the testing component for this regulation would be in the range of $99,000 to $400,000 per year, depending on the method chosen.

The cost of the recordkeeping requirements has two separate components: Recordkeeping for new models and recordkeeping for comparable models. The time consumed in recordkeeping for new models has been estimated at 20 hours per model. Thus the total time consumed for recordkeeping of new models would be 400 hours (20 hours × 20 models). Based on the average hourly compensation of $27.14 (for sales and office workers in goods-producing industries, Bureau of Labor Statistics, September 2008), the cost of recordkeeping for new models would be about $11,000 annually (400 hours × $27.14).

Time consumed in recordkeeping for lighters that are submitted for comparison to previously tested models will require approximately 3 hours for each model. For the last two complete fiscal years, an annual average of 1,100 comparison lighters have been submitted to the CPSC. Thus, an estimated 3,300 hours may be required by the firms for recordkeeping regarding comparison lighters (1,100 models × 3 hours). Based on the average hourly compensation of $27.14, the estimated cost of recordkeeping regarding comparison lighters is $90,000 annually (3,300 hours × $27.14). The total recordkeeping costs associated with the lighter regulation would be approximately $101,000 ($11,000 + $90,000).

In addition, each firm will submit information to the CPSC regarding the new testing and comparison submissions totaling about 1,120 responses per year (20 models tested + 1,100 comparison models). The total number of hours for these responses would be approximately 5,500 per year including new-product testing (1,800 hours if done in-house), new product recordkeeping (400 hours), and recordkeeping for comparison lighters (3,300 hours). The Commission staff estimates the total cost for firms for testing, recordkeeping, and reporting to comply with the lighter regulation would be in the range of $200,000 to $501,000, depending upon the test method chosen.

The Commission staff will expend approximately 4 full-time-equivalent staff years to administer the rule. The annual cost to the Federal government of the collection of information in these regulations is estimated to be $664,000.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: June 30, 2009.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E9–16012 Filed 7–7–09; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 09–C0020]

OKK Trading, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with OKK Trading, Inc., containing a civil penalty of $665,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by July 23, 2009.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0020, Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Seth B. Popkin, Lead Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7612.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: June 29, 2009.

Todd A. Stevenson,

Secretary.

In the Matter of OKK Trading, Inc.:

Settlement Agreement

1. In accordance with 16 CFR 1118.20, OKK Trading, Inc. (''OKK'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA''). The Commission is also responsible for the enforcement of the Federal Hazardous Substances Act, 15 U.S.C. 1264–1278 (''FHSA'').

3. OKK is a corporation organized and existing under the laws of California, with its principal offices located in Commerce, California. At all times relevant hereto, OKK sold toys and other children's articles.

Staff Allegations—Violation of the Lead Paint Ban

4. The Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint, found at 16 CFR Part 1303 (''Lead Paint Ban''), bans toys and other children's articles that bear or contain paint or other surface coating materials whose lead content is more than 0.06 percent of the weight of the total nonvolatile content of the paint or of the weight of the dried paint film. Pursuant to CPSA section 8, 15 U.S.C. 2057, and 16 CFR 1303.1(a)(1) and 1303.4(b), a product that fails to comply with this regulation is a ''banned hazardous product.''

5. From approximately November 2007 through August 2008, OKK imported into the United States, offered for sale, and distributed in commerce, units of different types of toys or other children's articles that violated the Lead Paint Ban. OKK provided the Commission staff with information about these violative toys or other children's articles, and, thereafter, the Commission staff accepted OKK's corrective action plans concerning them. The toys or other children's articles referred to in this paragraph are collectively referred to herein as ''Painted Toys.''

6. Tests on samples of the Painted Toys demonstrated that the Painted Toys bore or contained paint or other surface coating materials whose lead content is more than 0.06 percent of the weight of the total nonvolatile content of the paint or of the weight of the dried paint film. Therefore, the Painted Toys failed to comply with the Lead Paint Ban.

7. The Painted Toys are ''consumer product[s],'' and, at all times relevant hereto, OKK was a ''manufacturer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5), (8), and (11), 15 U.S.C. 2052(a)(5), (8), and (11).

8. OKK informed the Commission that it had received no reports of incidents or injuries relating to the Painted Toys.

9. Pursuant to CPSA section 8, 15 U.S.C. 2057, and 16 CFR 1303.1(a)(1) and 1303.4(b), the Painted Toys are ''banned hazardous products.''

10. Under CPSA section 19(a)(1), 15 U.S.C. 2068(a)(1), the offer for sale, distribution in commerce, or importation into the United States of a banned hazardous product is a prohibited act.

11. Under CPSA section 20(d), 15 U.S.C. 2069(d), OKK had actual knowledge that the Painted Toys were banned hazardous products, or it is presumed to have had knowledge deemed to be possessed by a reasonable person acting in the circumstances, and, therefore, OKK knowingly committed prohibited acts concerning the Painted Toys. Pursuant to CPSA section 20, 15 U.S.C. 2069, OKK's prohibited acts concerning the Painted Toys subjected it to civil penalties.

Violation of the Small Parts Regulation

12. From approximately December 2004 through August 2008, OKK introduced and/or delivered for introduction into interstate commerce, received in interstate commerce, and/or delivered or proffered delivery for pay or otherwise, units of different types of toys, intended for use by children under three years of age, that failed to comply with the Commission's Small Parts Regulation at 16 CFR Part 1501. OKK provided the Commission staff with information about these violative toys, and, thereafter, the Commission staff accepted OKK's corrective action plans concerning them. The toys referred to in this paragraph are collectively referred to herein as ''Toys.''

13. The Toys failed to comply with 16 CFR Part 1501 in that, when tested under the ''use and abuse'' test methods specified in 16 CFR 1500.51 and .52, one or more parts of each tested Toy separated, and one or more of the separated parts fit completely within the small parts cylinder identified in 16 CFR 1501.4.

14. OKK informed the Commission that it had received no reports of incidents or injuries relating to the Toys.

15. Because each Toy failed to comply with the Commission's Small Parts Regulation at 16 CFR Part 1501, it presented a ''mechanical hazard'' within the meaning of FHSA section 2(s), 15 U.S.C. 1261(s), and was a ''hazardous substance'' in accordance with FHSA section 2(f)(1)(D), 15 U.S.C. 1261(f)(1)(D).

16. Under 16 CFR 1500.18(a)(9), each Toy presented an unreasonable risk of personal injury or illness and was a ''banned hazardous substance'' within the meaning of FHSA section 2(q)(1)(A), 15 U.S.C. 1261(q)(1)(A).

17. Under FHSA section 4(a), 15 U.S.C. 1263(a), the introduction or delivery for introduction into interstate commerce of any banned hazardous substance, or the causing thereof, is a prohibited act. Under FHSA section 4(c), 15 U.S.C. 1263(c), the receipt in interstate commerce, and the delivery or proffered delivery for pay or otherwise, of any banned hazardous substance, and the causing thereof, is a prohibited act.

18. Under FHSA section 5(c)(5), 15 U.S.C. 1264(c)(5), OKK had actual knowledge that the Toys were banned hazardous substances, or it is presumed to have had knowledge deemed to be possessed by a reasonable person acting in the circumstances, and, therefore, OKK knowingly committed prohibited acts concerning the Toys. Pursuant to FHSA section 5(c)(1), 15 U.S.C. 1264(c)(1), OKK's prohibited acts concerning the Toys subjected it to civil penalties.

Violation of the Rattle Requirements

19. From approximately November 2004 to January 2005, OKK introduced and/or delivered for introduction into interstate commerce, received in interstate commerce, and/or delivered or proffered delivery for pay or otherwise, units of different types of rattles that failed to comply with the Commission's requirements for rattles at 16 CFR Part 1510. OKK provided the Commission staff with information about these violative rattles, and, thereafter, the Commission staff accepted OKK's corrective action plans concerning them. The rattles referred to in this paragraph are collectively referred to herein as ''Rattles.''

20. The Rattles failed to comply with 16 CFR Part 1510 in that, when tested under the procedures set forth in 16 CFR 1510.4, the Rattles penetrated to the full depth of the test fixture.

21. OKK informed the Commission that it had received no reports of incidents or injuries relating to the Rattles.

22. Because each Rattle failed to comply with the Commission's requirements for rattles at 16 CFR Part 1510, it presented a ''mechanical hazard'' within the meaning of FHSA section 2(s), 15 U.S.C. 1261(s), and was a ''hazardous substance'' in accordance with FHSA section 2(f)(1)(D), 15 U.S.C. 1261(f)(1)(D).

23. Under 16 CFR 1500.18(a)(15), each Rattle presented an unreasonable risk of personal injury or illness and was a ''banned hazardous substance'' within the meaning of FHSA section 2(q)(1)(A), 15 U.S.C. 1261(q)(1)(A).

24. Under FHSA section 4(a), 15 U.S.C. 1263(a), the introduction or delivery for introduction into interstate commerce of any banned hazardous substance, or the causing thereof, is a prohibited act. Under FHSA section 4(c), 15 U.S.C. 1263(c), the receipt in interstate commerce, and the delivery or proffered delivery for pay or otherwise, of any banned hazardous substance, and the causing thereof, is a prohibited act.

25. Under FHSA section 5(c)(5), 15 U.S.C. 1264(c)(5), OKK had actual

knowledge that the Rattles were banned hazardous substances, or it is presumed to have had knowledge deemed to be possessed by a reasonable person acting in the circumstances, and, therefore, OKK knowingly committed prohibited acts concerning the Rattles. Pursuant to FHSA section 5(c)(1), 15 U.S.C. 1264(c)(1), OKK's prohibited acts concerning the Rattles subjected it to civil penalties.

Violation of the Toys and Games Labeling Requirements

26. From approximately January 2005 through April 2007, OKK introduced and/or delivered for introduction into interstate commerce, received in interstate commerce, and/or delivered or proffered delivery for pay or otherwise, units of different types of toys and games, intended for children three years of age or older, that failed to comply with the Commission's labeling requirements for balloons, small balls, and/or small parts found in FHSA section 24(b)(2)(A), (b)(2)(B), and (b)(2)(C), 15 U.S.C. 1278(b)(2)(A), (b)(2)(B), and (b)(2)(C), 16 CFR 1500.19(b)(2), (b)(3)(ii), (b)(4)(i), and (d). OKK provided the Commission staff with information about these violative toys and games, and, thereafter, the Commission staff accepted OKK's corrective action plans concerning them. The toys and games referred to in this paragraph are collectively referred to herein as ''Toys/Games.''

27. OKK informed the Commission that it had received no reports of incidents or injuries relating to the Toys/Games.

28. Each of the Toys/Games presented a ''mechanical hazard'' within the meaning of FHSA section 2(s), 15 U.S.C. 1261(s), and was a ''hazardous substance'' in accordance with FHSA section 2(f)(1)(D), 15 U.S.C. 1261(f)(1)(D).

29. Under FHSA sections (3)(b) and 24(d), 15 U.S.C. 1262(b) and 1278(d), each of the Toys/Games was a ''misbranded hazardous substance'' within the meaning of FHSA section 2(p), 15 U.S.C. 1261(p).

30. Under FHSA section 4(a), 15 U.S.C. 1263(a), the introduction or delivery for introduction into interstate commerce of any misbranded hazardous substance, or the causing thereof, is a prohibited act. Under FHSA section 4(c), 15 U.S.C. 1263(c), the receipt in interstate commerce, and the delivery or proffered delivery for pay or otherwise, of any misbranded hazardous substance, and the causing thereof, is a prohibited act.

31. Under FHSA section 5(c)(5), 15 U.S.C. 1264(c)(5), OKK had actual knowledge that the Toys/Games were misbranded hazardous substances, or it is presumed to have had knowledge deemed to be possessed by a reasonable person acting in the circumstances, and, therefore, OKK knowingly committed prohibited acts concerning the Toys/Games. Pursuant to FHSA section 5(c)(1), 15 U.S.C. 1264(c)(1), OKK's prohibited acts concerning the Toys/Games subjected it to civil penalties.

Violation of the Art Materials Labeling Requirements

32. From approximately September 2005 through April 2007, OKK introduced and/or delivered for introduction into interstate commerce, received in interstate commerce, and/or delivered or proffered delivery for pay or otherwise, units of different types of art materials that failed to comply with the labeling requirements for art materials found in FHSA section 23, 15 U.S.C. 1277. OKK provided the Commission staff with information about these violative art materials, and, thereafter, the Commission staff accepted OKK's corrective action plans concerning them. The art materials referred to in this paragraph are collectively referred to herein as ''Art Materials.''

33. OKK informed the Commission that it had received no reports of incidents or injuries relating to the Art Materials.

34. Each of the Art Materials presented a ''mechanical hazard'' within the meaning of FHSA section 2(s), 15 U.S.C. 1261(s), and was a ''hazardous substance'' in accordance with FHSA section 2(f)(1)(D), 15 U.S.C. 1261(f)(1)(D).

35. Under FHSA sections (3)(b) and 23, 15 U.S.C. 1262(b) and 1277, each of the Art Materials was a ''misbranded hazardous substance'' within the meaning of FHSA section 2(p), 15 U.S.C. 1261(p).

36. Under FHSA section 4(a), 15 U.S.C. 1263(a), the introduction or delivery for introduction into interstate commerce of any misbranded hazardous substance, or the causing thereof, is a prohibited act. Under FHSA section 4(c), 15 U.S.C. 1263(c), the receipt in interstate commerce, and the delivery or proffered delivery for pay or otherwise, of any misbranded hazardous substance, and the causing thereof, is a prohibited act.

37. Under FHSA § 5(c)(5), 15 U.S.C. 1264(c)(5), OKK had actual knowledge that the Art Materials were misbranded hazardous substances, or it is presumed to have had knowledge deemed to be possessed by a reasonable person acting in the circumstances, and, therefore, OKK knowingly committed prohibited acts concerning the Art Materials. Pursuant to FHSA section 5(c)(1), 15 U.S.C. 1264(c)(1), OKK's prohibited acts concerning the Art Materials subjected it to civil penalties.

Violation of the Pacifier Requirements

38. From approximately July 2007 to January 2008, OKK introduced and/or delivered for introduction into interstate commerce, received in interstate commerce, and/or delivered or proffered delivery for pay or otherwise, units of a pacifier that failed to comply with the Commission's requirements for pacifiers at 16 CFR Part 1511. OKK provided the Commission staff with information about these violative pacifiers, and, thereafter, the Commission staff accepted OKK's corrective action plans concerning them. The pacifiers referred to in this paragraph are collectively referred to herein as ''Pacifiers.''

39. The Pacifiers failed to comply with 16 CFR Part 1511 in that: (a) When tested under the procedures set forth in 16 CFR 1511.5, the Pacifiers released parts that fit completely within the small parts cylinder identified in 16 CFR 1511.5; and (b) the Pacifiers' packaging failed to contain the labeling statement required by 16 CFR 1511.7.

40. OKK informed the Commission that it had received no reports of incidents or injuries relating to the Pacifiers.

41. Because each Pacifier failed to comply with the Commission's requirements for pacifiers at 16 CFR Part 1511, it presented a ''mechanical hazard'' within the meaning of FHSA section 2(s), 15 U.S.C. 1261(s), and was a ''hazardous substance'' in accordance with FHSA section 2(f)(1)(D), 15 U.S.C. 1261(f)(1)(D).

42. Under 16 CFR 1500.18(a)(8), each Pacifier presented an unreasonable risk of personal injury or illness and was a ''banned hazardous substance'' within the meaning of FHSA section 2(q)(1)(A), 15 U.S.C. 1261(q)(1)(A). Each of the Pacifiers was also a ''misbranded hazardous substance'' within the meaning of FHSA section 2(p), 15 U.S.C. 1261(p).

43. Under FHSA section 4(a), 15 U.S.C. 1263(a), the introduction or delivery for introduction into interstate commerce of any banned hazardous substance or misbranded hazardous substance, or the causing thereof, is a prohibited act. Under FHSA section 4(c), 15 U.S.C. 1263(c), the receipt in interstate commerce, and the delivery or proffered delivery for pay or otherwise, of any banned hazardous substance or misbranded hazardous substance, and the causing thereof, is a prohibited act.

44. Under FHSA section 5(c)(5), 15 U.S.C. 1264(c)(5), OKK had actual knowledge that the Pacifiers were banned hazardous substances and misbranded hazardous substances, or it is presumed to have had knowledge deemed to be possessed by a reasonable person acting in the circumstances, and, therefore, OKK knowingly committed prohibited acts concerning the Pacifiers. Pursuant to FHSA section 5(c)(1), 15 U.S.C. 1264(c)(1), OKK's prohibited acts concerning the Pacifiers subjected it to civil penalties.

Violation of the Export Notification Requirements

45. From approximately May to December 2007, without notifying the Commission as required under FHSA section 14(d), 15 U.S.C. 1273(d), OKK exported units of different types of banned and/or misbranded hazardous substances (collectively, ''Exported Substances''). OKK shipped the Exported Substances in separate shipments, each shipment constituting a separate series of violations.

46. Under FHSA section 4(i), 15 U.S.C. 1263(i), the failure to notify the Commission with respect to exports as required by FHSA section 14(d), 15 U.S.C. 1273(d), is a prohibited act.

47. Under FHSA section 5(c)(5), 15 U.S.C. 1264(c)(5), OKK had actual knowledge that the Exported Substances were banned and/or misbranded hazardous substances and that OKK failed to notify the Commission prior to their exportation as required under FHSA section 14(d), 15 U.S.C. 1273(d), or OKK is presumed to have had knowledge deemed to be possessed by a reasonable person acting in the circumstances. Therefore, OKK knowingly committed prohibited acts concerning the Exported Substances. Pursuant to FHSA section 5(c)(1), 15 U.S.C. 1264(c)(1), OKK's prohibited acts concerning the Exported Substances subjected it to civil penalties.

OKK's Response

48. OKK denies the Staff's allegations above that OKK knowingly violated the CPSA and FHSA.

Agreement of the Parties

49. Under the CPSA and FHSA, the Commission has jurisdiction over this matter and over OKK.

50. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by OKK, or a determination by the Commission, that OKK knowingly violated the CPSA and FHSA.

51. In settlement of the Staff's allegations, OKK shall pay a civil penalty in the total amount of six hundred sixty-five thousand dollars ($665,000.00). The civil penalty shall be paid in four (4) installments as follows: $200,000.00 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; $170,000 shall be paid on or before January 10, 2010; $170,000 shall be paid on or before January 10, 2011; and $125,000 shall be paid on or before July 10, 2011. Each payment shall be made by check payable to the order of the United States Treasury.

52. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

53. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, OKK knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether OKK failed to comply with the CPSA, the FHSA, and their underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

54. The Commission may publicize the terms of the Agreement and the Order.

55. The Agreement and the Order shall apply to, and be binding upon, OKK and each of its successors and assigns.

56. The Commission issues the Order under the provisions of the CPSA and FHSA, and violation of the Order may subject those persons or entities referenced in the preceding paragraph to appropriate legal action.

57. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

58. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and OKK agree that severing the provision materially affects the purpose of the Agreement and the Order.

59. The Agreement covers only those products that OKK distributed in commerce for which recalls or other corrective actions were undertaken in cooperation with the Commission prior to the date on which OKK executed the Agreement.

OKK Trading, Inc.

Dated: *4/7/2009*

By: _____

William Hung, CEO, OKK Trading, Inc., 5705 Union Pacific Ave., Commerce, CA 90022

Dated: *4/9/2009*

By: _____

Barry E. Powell, Esq., Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP, 707 Wilshire Blvd., Suite 4900, Los Angeles, CA 90017, Counsel for OKK Trading, Inc.

U.S. CONSUMER PRODUCT SAFETY COMMISSION STAFF

Cheryl A. Falvey,
General Counsel.

Ronald G. Yelenik
Assistant General Counsel Office of the General Counsel.

Dated: *4/30/09*

By: _____

Seth B. Popkin, Lead Trial Attorney, Division of Compliance, Office of the General Counsel.

In the Matter of KK Trading, Inc.:

Order

Upon consideration of the Settlement Agreement entered into between OKK Trading, Inc. (''OKK'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over OKK, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and *it is*

Further ordered, that OKK shall pay a civil penalty in the total amount of six hundred sixty-five thousand dollars ($665,000.00). The civil penalty shall be paid in four (4) installments as follows: $200,000.00 shall be paid within twenty (20) calendar days of service of the

Commission's final Order accepting the Agreement; $170,000 shall be paid on or before January 10, 2010; $170,000 shall be paid on or before January 10, 2011; and $125,000 shall be paid on or before July 10, 2011. Each payment shall be made by check payable to the order of the United States Treasury. Upon the failure of OKK to make any of the foregoing payments when due, the total amount of the civil penalty shall become immediately due and payable, and interest on the unpaid amount shall accrue and be paid by OKK at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 26th day of June, 2009.

By Order of the Commission.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E9–16013 Filed 7–7–09; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed revision of its Application Instructions for State Administrative Funds, Program Development Assistance and Training, and Disability Placement. These applications are used by State commissions to apply for funds to support activities related to administration, training, and access for people with disabilities. They are being revised to conform with provisions of the Serve America Act.

Copies of the information collection request can be obtained by contacting the office listed in the address section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by September 8, 2009.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, AmeriCorps State and National, Amy Borgstrom, Associate Director for Policy, 1201 New York Ave., NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606–3476, Attention Amy Borgstrom, Associate Director for Policy.

(4) Electronically through the Corporation's e-mail address system: *aborgstrom@cns.gov*.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, (202) 606–6930 or by e-mail at *aborgstrom@cns.gov*.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submissions of responses).

Background

AmeriCorps grants are generally awarded to eligible organizations to recruit, train, and manage AmeriCorps members who address unmet community needs. AmeriCorps members are individuals who engage in community service. Members may receive a living allowance during their term of service. Upon successful completion of their service members receive an education award from the National Service Trust.

Roughly three quarters of all AmeriCorps grant funding goes to Governor-appointed State service commissions which award subgrants to nonprofit organizations in their states. The State Administrative Funds, Program Development Assistance and Training, and Disability Placement Application Instructions are used by commissions to complete their application for these funds in eGrants, the Corporation's Web-based grants management system.

Current Action

The Corporation seeks to revise the current application instructions. The application instructions are being revised to conform with provisions of the Serve America Act. The application will be used in the same manner as the existing application. The Corporation also seeks to continue using the current application instructions until the revised application instructions are approved by OMB. The current application instructions are due to expire on May 31, 2010.

Type of Review: Revision; previously granted approval by OMB.

Agency: Corporation for National and Community Service.

Title: State Administrative Funds, Program Development Assistance and Training, and Disability Placement Application Instructions.

OMB Number: 3045–0099.

Agency Number: None.

Affected Public: State commissions.

Total Respondents: 54.

Frequency: Annually.

Average Time per Response: 24 hours.

Estimated Total Burden Hours: 1296 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this Notice will be summarized and/or included in the request for OMB approval of the information collection request; they will become a matter of public record.

Dated: June 26, 2009.

Lois Nembhard,

Acting Director, AmeriCorps State and National.

[FR Doc. E9–16027 Filed 7–7–09; 8:45 am]

BILLING CODE 6050–$$–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0366; FRL–8926–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Coke Oven Pushing Quenching and Battery Stacks (Renewal), EPA ICR Number 1995.04, OMB Control Number 2060–0521

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before August 7, 2009.

ADDRESSES: Submit your comments, referencing docket ID number EPA–OECA–2008–0366, to (1) EPA online using *www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 22881T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sounjay Gairola, Office of Enforcement and Compliance Assurance, Mail Code 2242A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4003; e-mail address: *gairola.sounjay@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 30, 2008 (73 FR 31088), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2008–0366, which is available for public viewing online at *http://www.regulations.gov* and in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: NESHAP for Coke Oven Pushing Quenching and Battery Stacks (Renewal).

ICR Numbers: EPA ICR Number 1995.04, OMB Control Number 2060–0521.

ICR Status: This ICR is scheduled to expire on August 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Coke Oven Pushing Quenching and Battery Stacks (40 CFR Part 63, Subpart CCCCC) were promulgated on April 14, 2003.

The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart CCCCC.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 229 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Coke oven pushing quenching and battery stacks.

Estimated Number of Respondents: 19.

Frequency of Response: Initially, occasionally, weekly, quarterly and semiannually.

*Estimated Total Annual Hour Burd*en: 25,879.

Estimated Total Annual Cost: $2,361,375: which is comprised of $2,191,875 in labor costs, $169,500 in O&M costs, and no annualized capital/startup costs.

Changes in the Estimates: There is no change in the basis for labor hours or cost to the respondents in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and

(2) the growth rate for respondents is very low, negative, or non-existent. The previous approved ICR renewal indicated 30 annual responses; after review of the previous supporting statement, it was determined that the number of indicated responses was an error. The total number of annual responses is 113. Additionally, there was a calculation error in the previous estimation of labor hours. The slight increase in burden is due to a correction in the total labor burden from 25,208 to 25,879 per year.

Dated: June 30, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–16007 Filed 7–7–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID Numbers EPA–HQ–OECA–2009–0378–83, 0386–88, 0391–95, 0397, 0400–06, 0408–10, 0411–28 and 0447; FRL–8927–7]

Agency Information Collection Activities: Request for Comments on Forty-Three Proposed Information Collection Requests (ICRs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following forty-three existing, approved, continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB) for the purpose of renewing the ICRs. Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described under **SUPPLEMENTARY INFORMATION**.

DATES: Comments must be submitted on or before September 8, 2009.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier service. Follow the detailed instructions as provided under **SUPPLEMENTARY INFORMATION**, section A.

FOR FURTHER INFORMATION CONTACT: The contact individuals for each ICR are listed under **SUPPLEMENTARY INFORMATION**, section II. C.

SUPPLEMENTARY INFORMATION:

A. How can I access the docket and/or submit comments?

(1) Docket Access Instructions

EPA has established a public docket for the ICRs listed in the **SUPPLEMENTARY INFORMATION**, section II. B. The docket is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket and Information Center (ECDIC), in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center (ECDIC) docket is (202) 566–1752.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified in this document.

(2) Instructions for Submitting Comments

Submit your comments by one of the following methods:

(a) *Electronic Submission:* Access *http://www.regulations.gov* and follow the on-line instructions for submitting comments.

(b) *E-mail: docket.oeca@epa.gov*

(c) *Fax:* (202) 566–1511

(d) *Mail:* Enforcement and Compliance Docket and Information Center (ECDIC), Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode: 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(e) *Hand Delivery:* Enforcement and Compliance Docket and Information Center (ECDIC), Environmental Protection Agency, EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Deliveries are only accepted during the Docket Center's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Direct your comments to the specific docket listed in **SUPPLEMENTARY INFORMATION**, section II. B, and reference the OMB Control Number for the ICR. It is EPA's policy that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

B. What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), EPA is soliciting comments and information to enable it to:

(1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

(2) Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

(3) Enhance the quality, utility, and clarity of the information to be collected.

(4) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, *e.g.,* permitting electronic submission of responses.

C. What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing comments:

(1) Explain your views as clearly as possible and provide specific examples.

(2) Describe any assumptions that you used.

(3) Provide copies of any technical information and/or data you used that support your views.

(4) If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

(5) Offer alternative ways to improve the collection activity.

(6) Make sure to submit your comments by the deadline identified under **DATES**.

(7) To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. ICRs To Be Renewed

A. For All ICRs

The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved ICRs listed in this notice. Where applicable, the Agency identified specific tasks and made assumptions, while being consistent with the concept of the PRA.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions to; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The listed ICRs address Clean Air Act information collection requirements in standards (*i.e.,* regulations) which have mandatory recordkeeping and reporting requirements. Records collected under the New Source Performance Standards (NSPS) must be retained by the owner or operator for at least two years and the records collected under the National Emission Standards for Hazardous Air Pollutants (NESHAP) must be retained by the owner or operator for at least five years. In general, the required collections consist of emissions data and other information deemed not to be private.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis as required by the Clean Air Act.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the Agency displays a currently valid OMB control number. The OMB control numbers for EPA's regulations under Title 40 of the Code of Federal Regulations are published in the **Federal Register**, or on the related collection instrument or form. The display of OMB control numbers for certain EPA regulations is consolidated at 40 CFR part 9.

B. What information collection activity or ICR does this apply to?

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following forty-three Information Collection Requests (ICR) to the Office of Management and Budget (OMB):

(1) *Docket ID Number:* EPA–HQ–OECA–2009–0379.

Title: NSPS for Beverage Can Surface Coating (40 CFR Part 60, Subpart WW).

ICR Numbers: EPA ICR Number 0663.04, OMB Control Number 2060–0001.

ICR Status: This ICR is scheduled to expire on October 31, 2009.

(2) *Docket ID Number:* EPA–HQ–OECA–2009–0383.

Title: NSPS for Small Municipal Waste Combustors (40 CFR Part 60, Subpart AAAA).

ICR Numbers: EPA ICR Number 1900.04, OMB Control Number 2060–0423.

ICR Status: This ICR is scheduled to expire on October 31, 2009.

(3) *Docket ID Number:* EPA–HQ–OECA–2009–0412.

Title: NSPS for Coal Preparation Plants (40 CFR Part 60, Subpart Y).

ICR Numbers: EPA ICR Number 1062.11, OMB Control Number 2060–0122.

ICR Status: This ICR is scheduled to expire on October 31, 2009.

(4) *Docket ID Number:* EPA–HQ–OECA–2009–0447.

Title: NSPS for Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed On or Before August 30, 1999 (40 CFR Part 60, Subpart BBBB).

ICR Numbers: EPA ICR Number 1901.04, OMB Control Number 2060–0424.

ICR Status: This ICR is scheduled to expire on October 31, 2009.

(5) *Docket ID Number:* EPA–HQ–OECA–2009–0389.

Title: NSPS for Metal Furniture Coating (40 CFR Part 60, Subpart EE).

ICR Numbers: EPA ICR Number 0649.10, OMB Control Number 2060–0106.

ICR Status: This ICR is scheduled to expire on October 31, 2009.

(6) *Docket ID Number:* EPA–HQ–OECA–2009–0406.

Title: NSPS for Stationary Source Combustion Turbines (40 CFR Part 60, Subpart KKKK).

ICR Numbers: EPA ICR Number 2177.03, OMB Control Number 2060–0582.

ICR Status: This ICR is scheduled to expire on October 31, 2009.

(7) *Docket ID Number:* EPA–HQ–OECA–2009–0382.

Title: Federal Emission Guidelines for Large Municipal Waste Combustors Constructed On or Before September 20, 1994 (40 CFR 62, Subpart FFF).

ICR Numbers: EPA ICR Number 1847.05, OMB Control Number 2060–0390.

ICR Status: This ICR is scheduled to expire on November 30, 2009.

(8) *Docket ID Number:* EPA–HQ–OECA–2009–0401.

Title: NESHAP for Miscellaneous Organic Chemical Manufacturing (40 CFR Part 63, Subpart FFFF).

ICR Numbers: EPA ICR Number 1969.04, OMB Control Number 2060–0533.

ICR Status: This ICR is scheduled to expire on December 31, 2009.

(9) *Docket ID Number:* EPA–HQ–OECA–2009–0386.

Title: NESHAP for Perchloroethylene Dry Cleaning Facilities (40 CFR Part 63, Subpart M).

ICR Numbers: EPA ICR Number 1415.09, OMB Control Number 2060–0234.

ICR Status: This ICR is scheduled to expire on December 31, 2009.

(10) *Docket ID Number:* EPA–HQ–OECA–2009–0391.

Title: NSPS for Phosphate Fertilizer Industry (40 CFR Part 60, Subparts T, U, V, W and X).

ICR Numbers: EPA ICR Number 1061.11, OMB Control Number 2060–0037.

ICR Status: This ICR is scheduled to expire on December 31, 2009.

(11) *Docket ID Number:* EPA–HQ–OECA–2009–0417.

Title: NSPS for Surface Coating of Plastic Parts for Business Machines (40 CFR Part 60, Subpart TTT).

ICR Numbers: EPA ICR Number 1093.09, OMB Control Number 2060–0162.

ICR Status: This ICR is scheduled to expire on January 31, 2010.

(12) *Docket ID Number:* EPA–HQ–OECA–2009–0416.

Title: NSPS for Nonmetallic Mineral Processing (40 CFR Part 60, Subpart OOO).

ICR Numbers: EPA ICR Number 1084.11, OMB Control Number 2060–0050.

ICR Status: This ICR is scheduled to expire on January 31, 2010.

(13) *Docket ID Number:* EPA–HQ–OECA–2009–0418.

Title: NSPS for Secondary Lead Smelters (40 CFR Part 60, Subpart L).

ICR Numbers: EPA ICR Number 1128.09, OMB Control Number 2060–0080.

(14) *Docket ID Number:* EPA–HQ–OECA–2009–0408.

Title: NESHAP for Lime Manufacturing (40 CFR Part 63, Subpart AAAAA).

ICR Numbers: EPA ICR Number 2072.04, OMB Control Number 2060–0554.

ICR Status: This ICR is scheduled to expire on January 31, 2010.

(15) *Docket ID Number:* EPA–HQ–OECA–2009–0378.

Title: NESHAP for Primary Nonferrous Metals Area Sources—Zinc, Cadmium and Beryllium (40 CFR Part 63, Subpart GGGGGG).

ICR Numbers: EPA ICR Number 2240.03, OMB Control Number 2060–0596.

ICR Status: This ICR is scheduled to expire on January 31, 2010.

(16) *Docket ID Number:* EPA–HQ–OECA–2009–0388.

Title: NESHAP for Oil and Natural Gas Production (40 CFR Part 63, Subpart HH).

ICR Numbers: EPA ICR Number 1788.09, OMB Control Number 2060–0417.

ICR Status: This ICR is scheduled to expire on February 28, 2010.

(17) *Docket ID Number:* EPA–HQ–OECA–2009–0427.

Title: NESHAP for Mercury Cell Chlor-Alkali Plants (40 CFR Part 63, Subpart IIIII).

ICR Numbers: EPA ICR Number 2046.05, OMB Control Number 2060–0542.

ICR Status: This ICR is scheduled to expire on February 28, 2010.

(18) *Docket ID Number:* EPA–HQ–OECA–2009–0428.

Title: NESHAP for Taconite Iron Ore Processing (40 CFR Part 63, Subpart RRRRR).

ICR Numbers: EPA ICR Number 2050.04, OMB Control Number 2060–0538.

ICR Status: This ICR is scheduled to expire on February 28, 2010.

(19) *Docket ID Number:* EPA–HQ–OECA–2009–0441.

Title: NSPS for Steel Plants: Electric Arc Furnaces and Argon Oxygen Decarbonization Vessels (40 CFR Part 60, Subparts AA and AAa).

ICR Numbers: EPA ICR Number 1060.15, OMB Control Number 2060–0038.

ICR Status: This ICR is scheduled to expire on March 31, 2010.

(20) *Docket ID Number:* EPA–HQ–OECA–2009–0393.

Title: NESHAP for Printing and Publishing Industry (40 CFR Part 63, Subpart KK).

ICR Numbers: EPA ICR Number 1739.06, OMB Control Number 2060–0335.

ICR Status: This ICR is scheduled to expire on March 31, 2010.

(21) *Docket ID Number:* EPA–HQ–OECA–2009–0402.

Title: NESHAP for Plastic Parts and Products Surface Coating (40 CFR Part 63, Subpart PPPP).

ICR Numbers: EPA ICR Number 2044.04, OMB Control Number 2060–0537.

ICR Status: This ICR is scheduled to expire on April 30, 2010.

(22) *Docket ID Number:* EPA–HQ–OECA–2009–0425.

Title: NESHAP for Portland Cement (40 CFR Part 63, Subpart LLL).

ICR Numbers: EPA ICR Number 1801.07, OMB Control Number 2060–0416.

ICR Status: This ICR is scheduled to expire on April 30, 2010.

(23) *Docket ID Number:* EPA–HQ–OECA–2009–0404.

Title: NESHAP for Iron and Steel Foundries (40 CFR Part 63, Subpart EEEEE).

ICR Numbers: EPA ICR Number 2096.04, OMB Control Number 2060–0537.

ICR Status: This ICR is scheduled to expire on May 31, 2010.

(24) *Docket ID Number:* EPA–HQ–OECA–2009–0410.

Title: NSPS for Pressure Sensitive Tape and Label Surface Coating Operations (40 CFR Part 60, Subpart RR).

ICR Numbers: EPA ICR Number 0658.10, OMB Control Number 2060–0004.

ICR Status: This ICR is scheduled to expire on May 31, 2010.

(25) *Docket ID Number:* EPA–HQ–OECA–2009–0420.

Title: NSPS for Flexible Vinyl and Urethane Coating and Printing (40 CFR Part 60, Subpart FFF).

ICR Numbers: EPA ICR Number 1157.09, OMB Control Number 2060–0073.

ICR Status: This ICR is scheduled to expire on May 31, 2010.

(26) *Docket ID Number:* EPA–HQ–OECA–2009–0424.

Title: NSPS for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced After June 11, 1973 prior to July 23, 1984 (40 CFR Part 60, Subpart Ka).

ICR Numbers: EPA ICR Number 1797.05, OMB Control Number 2060–0442.

ICR Status: This ICR is scheduled to expire on May 31, 2010.

(27) *Docket ID Number:* EPA–HQ–OECA–2009–0414.

Title: NSPS for Automobile and Light Duty Truck Surface Coating Operations (40 CFR Part 60, Subpart MM).

ICR Numbers: EPA ICR Number 1064.16, OMB Control Number 2060–0034.

ICR Status: This ICR is scheduled to expire on June 30, 2010.

(28) *Docket ID Number:* EPA–HQ–OECA–2009–0415.

Title: NSPS for Lead Acid Battery Manufacturing (40 CFR Part 60, Subpart KK).

ICR Numbers: EPA ICR Number 1072.09, OMB Control Number 2060–0081.

ICR Status: This ICR is scheduled to expire on June 30, 2010.

(29) *Docket ID Number:* EPA–HQ–OECA–2009–0405.

Title: NESHAP for Miscellaneous Coating Manufacturing (40 CFR Part 63, Subpart HHHHH).

ICR Numbers: EPA ICR Number 2115.03, OMB Control Number 2060–0535.

ICR Status: This ICR is scheduled to expire on June 30, 2010.

(30) *Docket ID Number:* EPA–HQ–OECA–2009–0394.

Title: NESHAP for Flexible Polyurethane Foam Product (40 CFR Part 63. Subpart III).

ICR Numbers: EPA ICR Number 1783.05, OMB Control Number 2060–0357.

ICR Status: This ICR is scheduled to expire on June 30, 2010.

(31) *Docket ID Number:* EPA–HQ–OECA–2009–0395.

Title: NESHAP for Mineral Wool Production (40 CFR Part 63, Subpart DDD).

ICR Numbers: EPA ICR Number 1799.05, OMB Control Number 2060–0362.

ICR Status: This ICR is scheduled to expire on May 31, 2010.

(32) *Docket ID Number:* EPA–HQ–OECA–2009–0380.

Title: NESHAP for Wood Furniture Manufacturing Operations (40 CFR Part 63, Subpart JJ).

ICR Numbers: EPA ICR Number 1716.06, OMB Control Number 2060–0324.

(33) *Docket ID Number:* EPA–HQ–OECA–2009–0397.

Title: NESHAP for the Manufacture of Amino/Phenolic Resins (40 CFR Part 63, Subpart OOO).

ICR Numbers: EPA ICR Number 1869.06, OMB Control Number 2060–0434.

ICR Status: This ICR is scheduled to expire on July 31, 2010.

(34) *Docket ID Number:* EPA–HQ–OECA–2009–0419.

Title: NSPS for Magnetic Tape Coating Facilities (40 CFR Part 60, Subpart SSS).

ICR Numbers: EPA ICR Number 1135.10, OMB Control Number 2060–0171.

ICR Status: This ICR is scheduled to expire on July 31, 2010.

(35) *Docket ID Number:* EPA–HQ–OECA–2009–0381.

Title: NESHAP for Pharmaceutical Production (40 CFR Part 63, Subpart GGG).

ICR Numbers: EPA ICR Number 1781.05, OMB Control Number 2060–0358.

ICR Status: This ICR is scheduled to expire on July 31, 2010.

(36) *Docket ID Number:* EPA–HQ–OECA–2009–0403.

Title: NESHAP for Metal Can Manufacturing Surface Coating (40 CFR Part 63, Subpart KKKK.

ICR Numbers: EPA ICR Number 2079.04, OMB Control Number 2060–0541.

ICR Status: This ICR is scheduled to expire on July 31, 2010.

(37) *Docket ID Number:* EPA–HQ–OECA–2009–0392.

Title: NESHAP for Commercial Ethylene Oxide Sterilization and Fumigation Operations (40 CFR Part 63, Subpart O).

ICR Numbers: EPA ICR Number 1666.08, OMB Control Number 2060–0283.

ICR Status: This ICR is scheduled to expire on July 31, 2010.

(38) *Docket ID Number:* EPA–HQ–OECA–2009–0421.

Title: NSPS for Secondary Brass and Bronze Production (40 CFR Part 60, Subpart M), Primary Copper Smelters (40 CFR Part 60, Subpart P, Primary Zinc Smelters (40 CFR Part 60, Subpart Q), Primary Lead Smelters (40 CFR Part 60, Subpart R), Primary Aluminum Reduction Plants (40 CFR Part 60, Subpart S), and Ferroalloy Production Facilities (40 CFR Part 60, Subpart Z).

ICR Numbers: EPA ICR Number 1604.09, OMB Control Number 2060–0110.

ICR Status: This ICR is scheduled to expire on July 31, 2010.

(39) *Docket ID Number:* EPA–HQ–OECA–2009–0409.

Title: NSPS for the Graphic Arts Industry (40 CFR Part 60, Subpart QQ).

ICR Numbers: EPA ICR Number 0657.10, OMB Control Number 2060–0105.

ICR Status: This ICR is scheduled to expire on July 31, 2010.

(40) *Docket ID Number:* EPA–HQ–OECA–2009–0423.

Title: NESHAP for Gasoline Distribution Facilities (40 CFR Part 63, Subpart R).

ICR Numbers: EPA ICR Number 1659.07, OMB Control Number 2060–0325.

ICR Status: This ICR is scheduled to expire on August 31, 2010.

(41) *Docket ID Number:* EPA–HQ–OECA–2009–0413.

Title: NSPS for Sewage Sludge Treatment Plant Incineration (40 CFR Part 60, Subpart O).

ICR Numbers: EPA ICR Number 1063.11, OMB Control Number 2060–0035.

ICR Status: This ICR is scheduled to expire on August 31, 2010.

(42) *Docket ID Number:* EPA–HQ–OECA–2009–0422.

Title: NESHAP Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 CFR Part 63, Subpart N).

ICR Numbers: EPA ICR Number 1611.07, OMB Control Number 2060–0327.

ICR Status: This ICR is scheduled to expire on September 30, 2010.

(43) *Docket ID Number:* EPA–HQ–OECA–2009–0400.

Title: NESHAP for Boat Manufacturing (40 CFR Part 63, Subpart VVVV).

ICR Numbers: EPA ICR Number 1966.04, OMB Control Number 2060–0546.

ICR Status: This ICR is scheduled to expire on September 30, 2010.

C. Contact Individuals for ICRs

(1) NSPS for Beverage Can Surface Coating (40 CFR Part 60, Subpart WW); Leonard Lazarus of the Office of Compliance at (202) 564–6369; or via e-mail to: *lazarus.leonard@epa.gov*; EPA ICR Number 0663.04; OMB Control Number 2060–0001; expiration date October 31, 2009.

(2) NSPS for Small Municipal Waste Combustors (40 CFR Part 60, Subpart AAAA); Rebecca Kane of the Office of Compliance at (202) 564–5960; or via e-mail to: *kane.rebecca@epa.gov*; EPA ICR Number 1900.04, OMB Control Number 2060–0423; expiration date October 31, 2009.

(3) NSPS for Coal Preparation Plants (40 CFR Part 60, Subpart Y); John Schaefer of the Office of Air Quality Planning and Standards at (919) 541–0296 or via e-mail to: *schaefer.john@epa.gov*; EPA ICR Number 1062.11; OMB Control Number 2060–0122; expiration date October 31, 2009.

(4) NSPS for Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed On or Before August 30, 1999 (40 CFR Part 60, Subpart BBBB); Docket ID Number EPA–HQ–OECA–2009–XXXX; EPA ICR Number 1901.04; OMB Control Number 2060–0424; expiration date October 31, 2009.

(5) NSPS for Metal Furniture Coating (40 CFR Part 60, Subpart EE); Leonard Lazarus of the Office of Compliance at (202) 564–6369; or via e-mail to: *lazarus.leonard@epa.gov*; EPA ICR Number 0649.10; OMB Control Number 2060–0106; expiration date October 31, 2009.

(6) NSPS for Stationary Source Combustion Turbines (40 CFR Part 60, Subpart KKKK); Learia Williams of the Office of Compliance at (202) 564–4113; or via e-mail to: *williams.learia@epa.gov*; EPA ICR Number 2177.03; OMB Control Number 2060–0582; expiration date October 31, 2009.

(7) Federal Emission Guidelines for Large Municipal Waste Combustors Constructed On or Before September 20, 1994 (40 CFR 62, Subpart FFF); Rebecca Kane of the Office of Compliance at (202) 564–5960; or via e-mail to: *kane.rebecca@epa.gov*; EPA ICR Number 1847.05; OMB Control Number 2060–0390; expiration date November 30, 2009.

(8) NESHAP for Miscellaneous Organic Chemical Manufacturing (40 CFR Part 63, Subpart FFFF); Learia Williams of the Office of Compliance at (202) 564–4113; or via e-mail to: *williams.learia@epa.gov*; EPA ICR Number 1969.04; OMB Control Number 2060–0533; expiration date December 31, 2009.

(9) NESHAP for Perchloroethylene Dry Cleaning Facilities (40 CFR Part 63, Subpart M); Learia Williams of the Office of Compliance at (202) 564–4113; or via e-mail to: *williams.learia@epa.gov*; EPA ICR Number 1415.09; OMB Control Number

2060–0234; expiration date December 31, 2009.

(10) NSPS for Phosphate Fertilizer Industry (40 CFR Part 60, Subparts T, U, V, W and X); Learia Williams of the Office of Compliance at (202) 564–4113; or via e-mail to: *williams.learia@epa.gov*; EPA ICR Number 1061.11; OMB Control Number 2060–0037; expiration date December 31, 2009.

(11) NSPS for Surface Coating of Plastic Parts for Business Machines (40 CFR Part 60, Subpart TTT); John Schaefer of the Office of Air Quality Planning and Standards at (919) 541–0296 or via e-mail to *schaefer.john@epa.gov*; EPA ICR Number 1093.09; OMB Control Number 2060–0162; expiration date January 31, 2010.

(12) NSPS for Nonmetallic Mineral Processing (40 CFR Part 60, Subpart OOO); John Schaefer of the Office of Air Quality Planning and Standards at (919) 541–0296 or via e-mail to *schaefer.john@epa.gov*; EPA ICR Number 1084.11; OMB Control Number 2060–0050; expiration date January 31, 2010.

(13) NSPS for Secondary Lead Smelters (40 CFR Part 60, Subpart L); John Schaefer of the Office of Air Quality Planning and Standards at (919) 541–0296 or via e-mail to *schaefer.john@epa.gov*; EPA ICR Number 1128.09; OMB Control Number 2060–0080; expiration date January 31, 2010.

(14) NESHAP for Lime Manufacturing (40 CFR Part 63, Subpart AAAAA); John Schaefer of the Office of Air Quality Planning and Standards at (919) 541–0296 or via e-mail to *schaefer.john@epa.gov*; EPA ICR Number 2072.04; OMB Control Number 2060–0554; expiration date January 31, 2010.

(15) NESHAP for Primary Nonferrous Metals Area Sources—Zinc, Cadmium and Beryllium (40 CFR Part 63, Subpart GGGGGG); Learia Williams of the Office of Compliance at (202) 564–4113; or via e-mail to: *williams.learia@epa.gov*; EPA ICR Number 2240.03; OMB Control Number 2060–0596; expiration date January 31, 2010.

(16) NESHAP for Oil and Natural Gas Production (40 CFR Part 63, Subpart HH); Learia Williams of the Office of Compliance at (202) 564–4113; or via e-mail to: *williams.learia@epa.gov*; EPA ICR Number 1788.09; OMB Control Number 2060–0417; EPA ICR Number 1788.09; expiration date February 28, 2010.

(17) NESHAP for Mercury Cell Chlor-Alkali Plants (40 CFR Part 63, Subpart IIIII); John Schaefer of the Office of Air Quality Planning and Standards at (919) 541–0296 or via e-mail to *schaefer.john@epa.gov*; EPA ICR Number 2046.05; OMB Control Number 2060–0542; expiration date February 28, 2010.

(18) NESHAP for Taconite Iron Ore Processing (40 CFR Part 63, Subpart RRRRR); John Schaefer of the Office of Air Quality Planning and Standards at (919) 541–0296 or via e-mail to *schaefer.john@epa.gov*; EPA ICR Number 2050.04; OMB Control Number 2060–0538; expiration date February 28, 2010.

(19) NSPS for Steel Plants: Electric Arc Furnaces and Argon Oxygen Decarbonization Vessels (40 CFR Part 60, Subparts AA and AAa); John Schaefer of the Office of Air Quality Planning and Standards at (919) 541–0296 or via e-mail to *schaefer.john@epa.gov*; EPA ICR Number 1060.15; OMB Control Number 2060–0038; expiration date March 31, 2010.

(20) NESHAP for Printing and Publishing Industry (40 CFR Part 63, Subpart KK); Learia Williams of the Office of Compliance at (202) 564–4113; or via e-mail to: *williams.learia@epa.gov*; EPA ICR Number 1739.06; OMB Control Number 2060–0335; expiration date March 31, 2010.

(21) NESHAP for Plastic Parts and Products Surface Coating (40 CFR Part 63, Subpart PPPP); Leonard Lazarus of the Office of Compliance at (202) 564–6369; or via e-mail to: *lazarus.leonard@epa.gov*; EPA ICR Number 2044.04; OMB Control Number 2060–0537; expiration date April 30, 2010.

(22) NESHAP for Portland Cement (40 CFR Part 63, Subpart LLL); John Schaefer of the Office of Air Quality Planning and Standards at (919) 541–0296 or via e-mail to *schaefer.john@epa.gov*; EPA ICR Number 1801.07; OMB Control Number 2060–0416; expiration date April 30, 2010.

(23) NESHAP for Iron and Steel Foundries (40 CFR Part 63, Subpart EEEEE); Learia Williams of the Office of Compliance at (202) 564–4113; or via e-mail to: *williams.learia@epa.gov*; EPA ICR Number 2096.04; OMB Control Number 2060–0537; expiration date May 31, 2010.

(24) NSPS for Pressure Sensitive Tape and Label Surface Coating Operations (40 CFR Part 60, Subpart RR); John Schaefer of the Office of Air Quality Planning and Standards at (919) 541–0296 or via e-mail to *schaefer.john@epa.gov*; EPA ICR Number 0658.10; OMB Control Number 2060–0004; expiration date May 31, 2010.

(25) NSPS for Flexible Vinyl and Urethane Coating and Printing (40 CFR Part 60, Subpart FFF); John Schaefer of the Office of Air Quality Planning and Standards at (919) 541–0296 or via e-mail to *schaefer.john@epa.gov*; EPA ICR Number 1157.09; OMB Control Number 2060–0073; expiration date May 31, 2010.

(26) NSPS for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced After June 11, 1973 prior to July 23, 1984 (40 CFR Part 60, Subpart Ka); John Schaefer of the Office of Air Quality Planning and Standards at (919) 541–0296 or via e-mail to *schaefer.john@epa.gov*; EPA ICR Number 1797.05; OMB Control Number 2060–0442; expiration date May 31, 2010.

(27) NSPS for Automobile and Light Duty Truck Surface Coating Operations (40 CFR Part 60, Subpart MM); John Schaefer of the Office of Air Quality Planning and Standards at (919) 541–0296 or via e-mail to *schaefer.john@epa.gov*; EPA ICR Number 1064.16; OMB Control Number 2060–0034; expiration date June 30, 2010.

(28) NSPS for Lead Acid Battery Manufacturing (40 CFR Part 60, Subpart KK); John Schaefer of the Office of Air Quality Planning and Standards at (919) 541–0296 or via e-mail to *schaefer.john@epa.gov*; EPA ICR Number 1072.09; OMB Control Number 2060–0081; expiration date June 30, 2010.

(29) NESHAP for Miscellaneous Coating Manufacturing (40 CFR Part 63, Subpart HHHHH); Learia Williams of the Office of Compliance at (202) 564–4113; or via e-mail to: *williams.learia@epa.gov*; EPA ICR Number 2115.03; OMB Control Number 2060–0535; expiration date June 30, 2010.

(30) NESHAP for Flexible Polyurethane Foam Product (40 CFR Part 63. Subpart III); Learia Williams of the Office of Compliance at (202) 564–4113; or via e-mail to: *williams.learia@epa.gov*; EPA ICR Number 1783.05; OMB Control Number 2060–0357; expiration date June 30, 2010.

(31) NESHAP for Mineral Wool Production (40 CFR Part 63, Subpart DDD); Learia Williams of the Office of Compliance at (202) 564–4113; or via e-mail to: *williams.learia@epa.gov*; EPA ICR Number 1799.05; OMB Control Number 2060–0362; expiration date May 31, 2010.

(32) NESHAP for Wood Furniture Manufacturing Operations (40 CFR Part 63, Subpart JJ); Learia Williams of the Office of Compliance at (202) 564–4113; or via e-mail to: *williams.learia@epa.gov*; EPA ICR Number 1716.06; OMB Control Number 2060–0324; expiration date June 30, 2010.

(33) NESHAP for the Manufacture of Amino/Phenolic Resins (40 CFR Part 63, Subpart OOO); Learia Williams of the Office of Compliance at (202) 564–4113; or via e-mail to: *williams.learia@epa.gov*; EPA ICR Number 1869.06; OMB Control Number 2060–0434; expiration date July 31, 2010.

(34) NSPS for Magnetic Tape Coating Facilities (40 CFR Part 60, Subpart SSS); John Schaefer of the Office of Air Quality Planning and Standards at (919) 541–0296 or via e-mail to *schaefer.john@epa.gov*; EPA ICR Number 1135.10; OMB Control Number 2060–0171; expiration date July 31, 2010.

(35) NESHAP for Pharmaceutical Production (40 CFR Part 63, Subpart GGG); Learia Williams of the Office of Compliance at (202) 564–4113; or via e-mail to: *williams.learia@epa.gov*; EPA ICR Number 1781.05; OMB Control Number 2060–0358; expiration date July 31, 2010.

(36) NESHAP for Metal Can Manufacturing Surface Coating (40 CFR Part 63, Subpart KKKK); Learia Williams of the Office of Compliance at (202) 564–4113; or via e-mail to: *williams.learia@epa.gov*; EPA ICR Number 2079.04; OMB Control Number 2060–0541; expiration date July 31, 2010.

(37) NESHAP for Commercial Ethylene Oxide Sterilization and Fumigation Operations (40 CFR Part 63, Subpart O); Learia Williams of the Office of Compliance at (202) 564–4113; or via e-mail to: *williams.learia@epa.gov*; EPA ICR Number 1666.08; OMB Control Number 2060–0283; expiration date July 31, 2010.

(38) NSPS for Secondary Brass and Bronze Production (40 CFR Part 60, Subpart M), Primary Copper Smelters (40 CFR Part 60, Subpart P, Primary Zinc Smelters (40 CFR Part 60, Subpart Q), Primary Lead Smelters (40 CFR Part 60, Subpart R), Primary Aluminum Reduction Plants (40 CFR Part 60, Subpart S), and Ferroalloy Production Facilities (40 CFR Part 60, Subpart Z); John Schaefer of the Office of Air Quality Planning and Standards at (919) 541–0296 or via e-mail to *schaefer.john@epa.gov*; EPA ICR Number 1604.09; OMB Control Number 2060–0110; expiration date July 31, 2010.

(39) NSPS for the Graphic Arts Industry (40 CFR Part 60, Subpart QQ); John Schaefer of the Office of Air Quality Planning and Standards at (919) 541–0296 or via e-mail to *schaefer.john@epa.gov*; EPA ICR Number 0657.10; OMB Control Number 2060–0105; expiration date July 31, 2010.

(40) NESHAP for Gasoline Distribution Facilities (40 CFR Part 63, Subpart R); John Schaefer of the Office of Air Quality Planning and Standards at (919) 541–0296 or via e-mail to *schaefer.john@epa.gov*; EPA ICR Number 1659.07; OMB Control Number 2060–0325; expiration date August 31, 2010.

(41) NSPS for Sewage Sludge Treatment Plant Incineration (40 CFR Part 60, Subpart O); John Schaefer of the Office of Air Quality Planning and Standards at (919) 541–0296 or via e-mail to *schaefer.john@epa.gov*; EPA ICR Number 1063.11; OMB Control Number 2060–0035; expiration date August 31, 2010.

(42) NESHAP Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 CFR Part 63, Subpart N); John Schaefer of the Office of Air Quality Planning and Standards at (919) 541–0296 or via e-mail to *schaefer.john@epa.gov*; EPA ICR Number 1611.07; OMB Control Number 2060–0327; expiration date September 30, 2010.

(43) NESHAP for Boat Manufacturing (40 CFR Part 63, Subpart VVVV); Learia Williams of the Office of Compliance at (202) 564–4113; or via e-mail to: *williams.learia@epa.gov*; EPA ICR Number 1966.04; OMB Control Number 2060–0546; expiration date September 30, 2010.

D. Information for Individual ICRs

(1) NSPS for Beverage Can Surface Coating (40 CFR Part 60, Subpart WW); Docket ID Number EPA–HQ–OECA–2009–0379; EPA ICR Number 0663.04; OMB Control Number 2060–0001; expiration date October 31, 2009.

Affected Entities: Entities potentially affected by this action are the owners or operators of beverage can surface coating facilities.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart WW.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 43 hours per response.

Respondents/Affected Entities: Beverage can surface coating facilities.

Estimated Number of Respondents: 48.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 5,134.

Estimated Total Annual Cost: $101,000, which is comprised of no annualized capital/startup costs and operation and maintenance (O&M) costs of $101,000.

(2) NSPS for Small Municipal Waste Combustors (40 CFR Part 60, Subpart AAAA); Docket ID Number EPA–HQ–OECA–2009–0383; EPA ICR Number 1900.04, OMB Control Number 2060–0423; expiration date October 31, 2009.

Affected Entities: Entities potentially affected by this action are the owners or operators of small municipal waste combustors.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart AAAA.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 145 hours per response.

Respondents/Affected Entities: Small municipal waste combustors.

Estimated Number of Respondents: 3.

Frequency of Response: Initially, occasionally, semiannually and annually.

Estimated Total Annual Hour Burden: 14,509.

Estimated Total Annual Cost: $168,000, which is comprised of $66,000 in annualized capital/startup costs and O&M costs of $102,000.

(3) NSPS for Coal Preparation Plants (40 CFR Part 60, Subpart Y); Docket ID

Number EPA–HQ–OECA–2009–0412; EPA ICR Number 1062.11; OMB Control Number 2060–0122; expiration date October 31, 2009.

Affected Entities: Entities potentially affected by this action are the owners or operators of coal preparation plants.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart Y.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 20 hours per response.

Respondents/Affected Entities: Coal preparation plants.

Estimated Number of Respondents: 1,013.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 29,590.

Estimated Total Annual Cost: $40,000, which is comprised of no annualized capital/startup costs and O&M costs of $40,000.

(4) NSPS for Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed On or Before August 30, 1999 (40 CFR Part 60, Subpart BBBB); Docket ID Number EPA–HQ–OECA–2009–0447; EPA ICR Number 1901.04; OMB Control Number 2060–0424; expiration date October 31, 2009.

Affected Entities: Entities potentially affected by this action are the owners or operators of small municipal waste combustion units constructed on or before August 30, 1999.

Abstract: This supporting statement addresses information collection activities imposed by the Emission Guidelines for Other Solid Waste Incineration (OSWI) Units (40 CFR Part 60 Subpart BBBB).

The emission guidelines can be thought of as model regulations that a State agency can use in developing plans to implement the emission guidelines. If a State does not develop, adopt, and submit an approvable State plan, the Federal government must develop a plan to implement the emission guidelines. This ICR includes the burden for an affected entity whether it is ultimately regulated under a State or Federal plan.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 1,709 hours per response.

Respondents/Affected Entities: Small municipal waste combustion units constructed on or before August 30, 1999.

Estimated Number of Respondents: 23.

Frequency of Response: Initially, occasionally, quarterly, semiannually and annually.

Estimated Total Annual Hour Burden: 100,854.

Estimated Total Annual Cost: $1,037,000, which is comprised of no annualized capital/startup costs and O&M costs of $1,037,000.

(5) NSPS for Metal Furniture Coating (40 CFR Part 60, Subpart EE); Docket ID Number EPA–HQ–OECA–2009–0389; EPA ICR Number 0649.10; OMB Control Number 2060–0106; expiration date October 31, 2009.

Affected Entities: Entities potentially affected by this action are the owners or operators of metal furniture coating facilities.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart EE.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 58 hours per response.

Respondents/Affected Entities: Metal furniture coating facilities.

Estimated Number of Respondents: 400.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 56,074.

Estimated Total Annual Cost: $840,000, which is comprised of no annualized capital/startup costs and O&M costs of $840,000.

(6) NSPS for Stationary Source Combustion Turbines (40 CFR Part 60, Subpart KKKK); Docket ID Number EPA–HQ–OECA–2009–0406; EPA ICR Number 2177.03; OMB Control Number 2060–0582; expiration date October 31, 2009.

Affected Entities: Entities potentially affected by this action are the owners or operators of stationary source combustion turbines.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart KKKK.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 26 hours per response.

Respondents/Affected Entities: Stationary source combustion turbines.

Estimated Number of Respondents: 73.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 20,542.

Estimated Total Annual Cost: There are no annualized capital/startup costs or O&M costs associated with this ICR.

(7) Federal Emission Guidelines for Large Municipal Waste Combustors Constructed On or Before September 20, 1994 (40 CFR 62, Subpart FFF); Docket ID Number EPA–HQ–OECA–2009–0382; EPA ICR Number 1847.05; OMB Control Number 2060–0390; expiration date November 30, 2009.

Affected Entities: Entities potentially affected by this action are the owners or operators of large municipal waste combustors constructed on or before September 20, 1994.

Abstract: This supporting statement addresses information collection activities imposed by the Federal Emission Guidelines for Large Municipal Waste Combustors Constructed On or Before September 20, 1994 (40 CFR Part 62, Subpart FFF).

The emission guidelines can be thought of as model regulations that a State agency can use in developing plans to implement the emission guidelines. If a State does not develop, adopt, and submit an approvable State plan, the Federal government must develop a plan to implement the emission guidelines. This ICR includes

the burden for an affected entity whether it is ultimately regulated under a State or Federal plan.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 1,601 hours per response.

Respondents/Affected Entities: Federal Emission Guidelines for Large Municipal Waste Combustors Constructed On or Before September 20, 1994.

Estimated Number of Respondents: 9.

Frequency of Response: Initially, occasionally, quarterly, semiannually and annually.

Estimated Total Annual Hour Burden: 38,417.

Estimated Total Annual Cost: $384,000, which is comprised of no annualized capital/startup costs and O&M costs of $384,000.

(8) NESHAP for Miscellaneous Organic Chemical Manufacturing (40 CFR Part 63, Subpart FFFF); Docket ID Number EPA–HQ–OECA–2009–0401; EPA ICR Number 1969.04; OMB Control Number 2060–0533; expiration date December 31, 2009.

Affected Entities: Entities potentially affected by this action are the owners or operators of miscellaneous organic chemical manufacturing plants.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart FFFF.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 254 hours per response.

Respondents/Affected Entities: Miscellaneous organic chemical manufacturing facilities.

Estimated Number of Respondents: 257.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 416,830.

Estimated Total Annual Cost: $6,133,000, which is comprised of $670,000 annualized capital/startup costs and O&M costs of $5,463,000.

(9) NESHAP for Perchloroethylene Dry Cleaning Facilities (40 CFR Part 63, Subpart M); Docket ID Number EPA–HQ–OECA–2009–0386; EPA ICR Number 1415.09; OMB Control Number 2060–0234; expiration date December 31, 2009.

Affected Entities: Entities potentially affected by this action are the owners or operators of perchloroethylene dry cleaning facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart M.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 42 hours per response.

Respondents/Affected Entities: Perchloroethylene dry cleaning facilities.

Estimated Number of Respondents: 34,240.

Frequency of Response: Occasionally and annually.

Estimated Total Annual Hour Burden: 1,537,784.

Estimated Total Annual Cost: $53,000, which is comprised of no annualized capital/startup costs and O&M costs of $53,000.

(10) NSPS for Phosphate Fertilizer Industry (40 CFR Part 60, Subparts T, U, V, W and X); Docket ID Number EPA–HQ–OECA–2009–0391; EPA ICR Number 1061.11; OMB Control Number 2060–0037; expiration date December 31, 2009.

Affected Entities: Entities potentially affected by this action are the owners or operators of phosphate fertilizer plants.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subparts T, U, V, and X.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 46 hours per response.

Respondents/Affected Entities: Phosphate fertilizer plants.

Estimated Number of Respondents: 13.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 1,194.

Estimated Total Annual Cost: $320,190, which is comprised of no annualized capital/startup costs and O&M costs of $320,190.

(11) NSPS for Surface Coating of Plastic Parts for Business Machines (40 CFR Part 60, Subpart TTT); Docket ID Number EPA–HQ–OECA–2009–0417; EPA ICR Number 1093.09; OMB Control Number 2060–0162; expiration date January 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of facilities that surface Coat plastic parts for business machines.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart TTT.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 35 hours per response.

Respondents/Affected Entities: Facilities that surface coating of plastic parts for business machines.

Estimated Number of Respondents: 10.

Frequency of Response: Occasionally, monthly, quarterly and semiannually.

Estimated Total Annual Hour Burden: 15,643.

Estimated Total Annual Cost: There are no annualized capital/startup costs or O&M costs associated with this ICR.

(12) NSPS for Nonmetallic Mineral Processing (40 CFR Part 60, Subpart

OOO); Docket ID Number EPA–HQ–OECA–2009–0416; EPA ICR Number 1084.11; OMB Control Number 2060–0050; expiration date January 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of nonmetallic mineral processing facilities.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart OOO.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately six hours per response.

Respondents/Affected Entities: Nonmetallic mineral processing facilities.

Estimated Number of Respondents: 3,825.

Frequency of Response: Initially and occasionally.

Estimated Total Annual Hour Burden: 31,026.

Estimated Total Annual Cost: There are no annualized capital/startup costs or O&M costs associated with this ICR.

(13) NSPS for Secondary Lead Smelters (40 CFR Part 60, Subpart L); Docket ID Number EPA–HQ–OECA–2009–0418; EPA ICR Number 1128.09; OMB Control Number 2060–0080; expiration date January 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of secondary lead smelters.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart L.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 1.5 hours per response.

Respondents/Affected Entities: Secondary lead smelters.

Estimated Number of Respondents: 25.

Frequency of Response: Initially and occasionally.

Estimated Total Annual Hour Burden: 38.

Estimated Total Annual Cost: There are no annualized capital/startup costs or O&M costs associated with this ICR.

(14) NESHAP for Lime Manufacturing (40 CFR Part 63, Subpart AAAAA); Docket ID Number EPA–HQ–OECA–2009–0408; EPA ICR Number 2072.04; OMB Control Number 2060–0554; expiration date January 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of lime manufacturing plants.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart AAAAA.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 99 hours per response.

Respondents/Affected Entities: Lime manufacturing plants.

Estimated Number of Respondents: 44.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 10,212.

Estimated Total Annual Cost: $174,000, which is comprised of $3,000 in annualized capital/startup costs and O&M costs of $171,000.

(15) NESHAP for Primary Nonferrous Metals Area Sources—Zinc, Cadmium and Beryllium (40 CFR Part 63, Subpart GGGGGG); Docket ID Number EPA–HQ–OECA–2009–0378; EPA ICR Number 2240.03; OMB Control Number 2060–0596; expiration date January 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of primary nonferrous metals facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart GGGGG.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 13 hours per response.

Respondents/Affected Entities: Primary nonferrous metals facilities.

Estimated Number of Respondents: 5.

Frequency of Response: Occasionally.

Estimated Total Annual Hour Burden: 38.

Estimated Total Annual Cost: There are no annualized capital/startup costs or O&M costs associated with this ICR.

(16) NESHAP for Oil and Natural Gas Production (40 CFR Part 63, Subpart HH); Docket ID Number EPA–HQ–OECA–2009–0388; EPA ICR Number 1788.10; OMB Control Number 2060–0417; expiration date February 28, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of oil and natural gas production facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart HH.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 98 hours per response.

Respondents/Affected Entities: Oil and Natural Gas Production Facilities.

Estimated Number of Respondents: 129,846.

Frequency of Response: Occasionally, semiannually and annually.

Estimated Total Annual Hour Burden: 203,921.

Estimated Total Annual Cost: $525,000, which is comprised of annualized capital/startup costs of $20,000, and O&M costs of $505,000.

(17) NESHAP for Mercury Cell Chlor-Alkali Plants (40 CFR Part 63, Subpart IIIII); Docket ID Number EPA–HQ–OECA–2009–0427; EPA ICR Number 2046.05; OMB Control Number 2060–0542; expiration date February 28, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of mercury cell chlor-alkali plants.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart IIIII.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 809 hours per response.

Respondents/Affected Entities: Mercury cell chlor-alkali plants.

Estimated Number of Respondents: 9.

Frequency of Response: Occasionally and semiannually.

Estimated Total Annual Hour Burden: 14,558.

Estimated Total Annual Cost: $74,000, which is comprised of no annualized capital/startup costs and O&M costs of $74,000.

(18) NESHAP for Taconite Iron Ore Processing (40 CFR Part 63, Subpart RRRRR); Docket ID Number EPA–HQ–OECA–2009–0428; EPA ICR Number 2050.04; OMB Control Number 2060–0538; expiration date February 28, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of taconite iron ore processing plants.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart RRRRR.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 19 hours per response.

Respondents/Affected Entities: Taconite iron ore processing plants.

Estimated Number of Respondents: 8.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 408.

Estimated Total Annual Cost: $258,000, which is comprised of no annualized capital/startup costs and O&M costs of $258,000.

(19) *NSPS for Steel Plants:* Electric Arc Furnaces and Argon Oxygen Decarbonization Vessels (40 CFR Part 60, Subparts AA and AAa); Docket ID Number EPA–HQ–OECA–2009–0441; EPA ICR Number 1060.15; OMB Control Number 2060–0038; expiration date March 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of electric arc furnaces and argon oxygen decarbonization vessels.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subparts AA and AAa.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 308 hours per response.

Respondents/Affected Entities: Electric arc furnaces and argon oxygen decarbonization vessels.

Estimated Number of Respondents: 97.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 60,112.

Estimated Total Annual Cost: $198,000, which is comprised of $4,000 in annualized capital/startup costs and O&M costs of $194,000.

(20) NESHAP for Printing and Publishing Industry (40 CFR Part 63, Subpart KK); Docket ID Number EPA–HQ–OECA–2009–0393; EPA ICR Number 1739.06; OMB Control Number 2060–0335; expiration date March 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of printing and publishing facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart KK.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 1,002 hours per response.

Respondents/Affected Entities: Portland cement plants.

Estimated Number of Respondents: 352.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 50,796.

Estimated Total Annual Cost: $412,000, which is comprised of $7,000 in annualized capital/startup costs and O&M costs of $405,000.

(21) NESHAP for Plastic Parts and Products Surface Coating (40 CFR Part 63, Subpart PPPP); Docket ID Number EPA–HQ–OECA–2009–0402; EPA ICR Number 2044.04; OMB Control Number 2060–0537; expiration date April 30, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of plastic parts and products surface coating facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A,

and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart PPPP.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 78 hours per response.

Respondents/Affected Entities: Plastic parts and products surface coating facilities.

Estimated Number of Respondents: 828.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 321,393.

Estimated Total Annual Cost: $264,000, which is comprised of $16,000 in annualized capital/startup costs and O&M costs of $248,000.

(22) NESHAP for Portland Cement (40 CFR Part 63, Subpart LLL); Docket ID Number EPA–HQ–OECA–2009–0425; EPA ICR Number 1801.07; OMB Control Number 2060–0416; expiration date April 30, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of portland cement plants.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart LLL.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 101 hours per response.

Respondents/Affected Entities: Portland cement plants.

Estimated Number of Respondents: 107.

Frequency of Response: Initially, occasionally, semiannually and annually.

Estimated Total Annual Hour Burden: 21,685.

Estimated Total Annual Cost: $954,000, which is comprised of no annualized capital/startup costs and O&M costs of $954,000.

(23) NESHAP for Iron and Steel Foundries (40 CFR Part 63, Subpart EEEEE); Docket ID Number EPA–HQ–OECA–2009–0404; EPA ICR Number 2096.04; OMB Control Number 2060–0537; expiration date May 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of iron and steel foundries.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart EEEEE.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 151 hours per response.

Respondents/Affected Entities: Iron and steel foundries.

Estimated Number of Respondents: 98.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 29,747.

Estimated Total Annual Cost: $400,000, which is comprised of no annualized capital/startup costs and O&M costs of $400,000.

(24) NSPS for Pressure Sensitive Tape and Label Surface Coating Operations (40 CFR Part 60, Subpart RR); Docket ID Number EPA–HQ–OECA–2009–0410; EPA ICR Number 0658.10; OMB Control Number 2060–0004; expiration date May 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of pressure sensitive tape and label surface coating operations.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart RR.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 25 hours per response.

Respondents/Affected Entities: Pressure sensitive tape and label surface coating operations.

Estimated Number of Respondents: 37.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 3,353.

Estimated Total Annual Cost: $72,000, which is comprised of $7,000, in annualized capital/startup costs and O&M costs of $65,000.

(25) NSPS for Flexible Vinyl and Urethane Coating and Printing (40 CFR Part 60, Subpart FFF); Docket ID Number EPA–HQ–OECA–2009–0420; EPA ICR Number 1157.09; OMB Control Number 2060–0073; expiration date May 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of flexible vinyl and urethane coating and printing facilities.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart FFF.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 14 hours per response.

Respondents/Affected Entities: Flexible vinyl and urethane coating and printing facilities.

Estimated Number of Respondents: 21.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 593.

Estimated Total Annual Cost: $61,000, which is comprised of $7,000, in annualized capital/startup costs and O&M costs of $54,000.

(26) NSPS for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced After June 11, 1973 prior to July 23, 1984 (40 CFR Part 60, Subpart Ka); Docket ID Number EPA–HQ–OECA–2009–0424; EPA ICR Number 1797.05; OMB Control Number 2060–0442; expiration date May 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of petroleum liquid storage vessels.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart Ka.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 170 hours per response.

Respondents/Affected Entities: Petroleum liquid storage vessels.

Estimated Number of Respondents: 220.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 678.

Estimated Total Annual Cost: There are no annualized capital/startup costs or O&M costs associated with this ICR.

(27) NSPS for Automobile and Light Duty Truck Surface Coating Operations (40 CFR Part 60, Subpart MM); Docket ID Number EPA–HQ–OECA–2009–0414; EPA ICR Number 1064.16; OMB Control Number 2060–0034; expiration date June 30, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of automobile and light duty truck surface coating operations.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart MM.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 745 hours per response.

Respondents/Affected Entities: Automobile and light duty truck surface coating operations.

Estimated Number of Respondents: 54.

Frequency of Response: Initially, occasionally, quarterly, and semiannually.

Estimated Total Annual Hour Burden: 156,362.

Estimated Total Annual Cost: $93,000, which is comprised of $2,000, in annualized capital/startup costs and O&M costs of $91,000.

(28) NSPS for Lead Acid Battery Manufacturing (40 CFR Part 60, Subpart KK); Docket ID Number EPA–HQ–OECA–2009–0415; EPA ICR Number 1072.09; OMB Control Number 2060–0081; expiration date June 30, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of lead acid battery manufacturing facilities.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart KK.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 62 hours per response.

Respondents/Affected Entities: Lead acid battery manufacturing facilities.

Estimated Number of Respondents: 52.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 4,053.

Estimated Total Annual Cost: $12,000, which is comprised of no annualized capital/startup costs and O&M costs of $12,000.

(29) NESHAP for Miscellaneous Coating Manufacturing (40 CFR Part 63, Subpart HHHHH); Docket ID Number EPA–HQ–OECA–2009–0405; EPA ICR Number 2115.03; OMB Control Number 2060–0535; expiration date June 30, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of miscellaneous coating manufacturing facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart HHHHH.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 84 hours per response.

Respondents/Affected Entities: Miscellaneous coating manufacturing facilities.

Estimated Number of Respondents: 129.

Frequency of Response: Initially, occasionally, semiannually and annually.

Estimated Total Annual Hour Burden: 10,139.

Estimated Total Annual Cost: $44,000, which is comprised of $10,000, in annualized capital/startup costs and O&M costs of $34,000.

(31) NESHAP for Flexible Polyurethane Foam Product (40 CFR Part 63, Subpart III); Docket ID Number EPA–HQ–OECA–2009–0394; EPA ICR Number 1783.05; OMB Control Number 2060–0357; expiration date June 30, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of flexible polyurethane foam product facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the

General Provisions specified at 40 CFR part 63, subpart III.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 43 hours per response.

Respondents/Affected Entities: Flexible polyurethane foam product facilities.

Estimated Number of Respondents: 132.

Frequency of Response: Initially, occasionally, semiannually and annually.

Estimated Total Annual Hour Burden: 9,047.

Estimated Total Annual Cost: There are no annualized capital/startup costs or O&M costs associated with this ICR.

(32) NESHAP for Mineral Wool Production (40 CFR Part 63, Subpart DDD); Docket ID Number EPA–HQ–OECA–2009–0395; EPA ICR Number 1799.05; OMB Control Number 2060–0362; expiration date May 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of mineral wool production facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart DDD.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 126 hours per response.

Respondents/Affected Entities: Mineral wool production facilities.

Estimated Number of Respondents: 12.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 3,018.

Estimated Total Annual Cost: $9,000, which is comprised of no annualized capital/startup costs and O&M costs of $9,000.

(33) NESHAP for Wood Furniture Manufacturing Operations (40 CFR Part 63, Subpart JJ); Docket ID Number EPA–HQ–OECA–2009–0380; EPA ICR Number 1716.06; OMB Control Number 2060–0324; expiration date June 30, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of wood furniture manufacturing operations.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart JJ.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 45 hours per response.

Respondents/Affected Entities: Wood furniture manufacturing operations.

Estimated Number of Respondents: 750.

Frequency of Response: Initially, occasionally, quarterly, semiannually and annually.

Estimated Total Annual Hour Burden: 47,190.

Estimated Total Annual Cost: $18,000, which is comprised of no annualized capital/startup costs and O&M costs of $18,000.

(34) NESHAP for the Manufacture of Amino/Phenolic Resins (40 CFR Part 63, Subpart OOO); Docket ID Number EPA–HQ–OECA–2009–0397; EPA ICR Number 1869.06; OMB Control Number 2060–0434; expiration date July 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of amino/phenolic resins manufacturing facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart OOO.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 293 hours per response.

Respondents/Affected Entities: amino/phenolic resins manufacturing facilities.

Estimated Number of Respondents: 40.

Frequency of Response: Initially, occasionally, quarterly, semiannually and annually.

Estimated Total Annual Hour Burden: 24,044.

Estimated Total Annual Cost: $16,000, which is comprised of no annualized capital/startup costs and O&M costs of $16,000.

(35) NSPS for Magnetic Tape Coating Facilities (40 CFR Part 60, Subpart SSS); Docket ID Number EPA–HQ–OECA–2009–0419; EPA ICR Number 1135.10; OMB Control Number 2060–0171; expiration date July 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of magnetic tape coating facilities.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart SSS.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 88 hours per response.

Respondents/Affected Entities: Magnetic tape coating facilities.

Estimated Number of Respondents: 6.

Frequency of Response: Initially, occasionally, quarterly, and semiannually.

Estimated Total Annual Hour Burden: 2,017.

Estimated Total Annual Cost: $87,000, which is comprised of $34,000, in annualized capital/startup costs and O&M costs of $53,000.

(36) NESHAP for Pharmaceutical Production (40 CFR Part 63, Subpart GGG); Docket ID Number EPA–HQ–OECA–2009–0381; EPA ICR Number 1781.05; OMB Control Number 2060–0358; expiration date July 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of pharmaceutical production facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart GGG.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 250 hours per response.

Respondents/Affected Entities: Pharmaceutical production facilities.

Estimated Number of Respondents: 101.

Frequency of Response: Initially, occasionally, quarterly, semiannually and annually.

Estimated Total Annual Hour Burden: 158,179.

Estimated Total Annual Cost: $9,000, which is comprised of $5,000, in annualized capital/startup costs and O&M costs of $4,000.

(37) NESHAP for Metal Can Manufacturing Surface Coating (40 CFR Part 63, Subpart KKKK); Docket ID Number EPA–HQ–OECA–2009–0403; EPA ICR Number 2079.04; OMB Control Number 2060–0541; expiration date July 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of metal can manufacturing surface coating facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart KKKK.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 28 hours per response.

Respondents/Affected Entities: Metal can manufacturing surface coating.

Estimated Number of Respondents: 1.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 7,815.

Estimated Total Annual Cost: $1,732,000, which is comprised of $1,731,000, in annualized capital/startup costs and O&M costs of $1,000.

(38) NESHAP for Commercial Ethylene Oxide Sterilization and Fumigation Operations (40 CFR Part 63, Subpart O); Docket ID Number EPA–HQ–OECA–2009–0392; EPA ICR Number 1666.08; OMB Control Number 2060–0283; expiration date July 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of commercial ethylene oxide sterilization and fumigation operations.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart O.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 37 hours per response.

Respondents/Affected Entities: Commercial ethylene oxide sterilization and fumigation operations.

Estimated Number of Respondents: 119.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 8,662.

Estimated Total Annual Cost: $648,000, which is comprised of $65,000, in annualized capital/startup costs and O&M costs of $583,000.

(39) NSPS for Secondary Brass and Bronze Production (40 CFR Part 60, Subpart M), Primary Copper Smelters (40 CFR Part 60, Subpart P, Primary Zinc Smelters (40 CFR Part 60, Subpart Q), Primary Lead Smelters (40 CFR Part 60, Subpart R), Primary Aluminum Reduction Plants (40 CFR Part 60, Subpart S), and Ferroalloy Production Facilities (40 CFR Part 60, Subpart Z); Docket ID Number EPA–HQ–OECA–2009–0421; EPA ICR Number 1604.09; OMB Control Number 2060–0110; expiration date July 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of secondary brass and bronze production facilities, primary copper smelters, primary zinc smelters, primary lead smelters, primary aluminum reduction plants, and ferroalloy production facilities.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subparts M, P, Q, R, S and Z.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 169 hours per response.

Respondents/Affected Entities: Secondary brass and bronze production facilities, primary copper smelters, primary zinc smelters, primary lead smelters, primary aluminum reduction plants, and ferroalloy production facilities.

Estimated Number of Respondents: 18.

Frequency of Response: Initially, occasionally, semiannually and annually.

Estimated Total Annual Hour Burden: 4,914.

Estimated Total Annual Cost: $132,000, which is comprised of no annualized capital/startup costs and O&M costs of $132,000.

(40) NSPS for the Graphic Arts Industry (40 CFR Part 60, Subpart QQ); Docket ID Number EPA–HQ–OECA–2009–0409; EPA ICR Number 0657.10; OMB Control Number 2060–0105; expiration date July 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of graphic arts facilities.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart QQ.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 37 hours per response.

Respondents/Affected Entities: Graphic arts facilities.

Estimated Number of Respondents: 19.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 1,718.

Estimated Total Annual Cost: There are no annualized capital/startup costs or O&M costs associated with this ICR.

(41) NESHAP for Gasoline Distribution Facilities (40 CFR Part 63, Subpart R); Docket ID Number EPA–HQ–OECA–2009–0423; EPA ICR Number 1659.07; OMB Control Number 2060–0325; expiration date August 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of gasoline distribution facilities.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart R.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 62 hours per response.

Respondents/Affected Entities: Gasoline distribution facilities.

Estimated Number of Respondents: 263.

Frequency of Response: Initially, occasionally, semiannually and annually.

Estimated Total Annual Hour Burden: 32,575.

Estimated Total Annual Cost: $851,000, which is comprised of no annualized capital/startup costs and O&M costs of $851,000.

(60) NSPS for Sewage Sludge Treatment Plant Incineration (40 CFR Part 60, Subpart O); Docket ID Number EPA–HQ–OECA–2009–0413; EPA ICR Number 1063.11; OMB Control Number 2060–0035; expiration date August 31, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of sewage sludge treatment plant incinerators.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart O.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 55 hours per response.

Respondents/Affected Entities: Sewage sludge treatment plant incinerators.

Estimated Number of Respondents: 54.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 6,214.

Estimated Total Annual Cost: $1,990,000, which is comprised of $100,000, in annualized capital/startup costs and O&M costs of $1,890,000.

(42) NESHAP Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 CFR Part 63, Subpart N); Docket ID Number EPA–HQ–OECA–2009–0422; EPA ICR Number 1611.07; OMB Control Number 2060–0327; expiration date September 30, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of hard and decorative chromium electroplating and chromium anodizing tanks.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart N.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 83 hours per response.

Respondents/Affected Entities: Hard and decorative chromium electroplating and chromium anodizing tanks.

Estimated Number of Respondents: 5,020.

Frequency of Response: Initially, occasionally, quarterly, semiannually and annually.

Estimated Total Annual Hour Burden: 495,774.

Estimated Total Annual Cost: $75,300,000, which is comprised of no annualized capital/startup costs and O&M costs of $75,300,000.

(43) NESHAP for Boat Manufacturing (40 CFR Part 63, Subpart VVVV); Docket ID Number EPA–HQ–OECA–2009–0400; EPA ICR Number 1966.04; OMB Control Number 2060–0546; expiration date September 30, 2010.

Affected Entities: Entities potentially affected by this action are the owners or operators of boat manufacturers.

Abstract: The affected entities are subject to the General Provisions of the

NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart VVVV.

Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 230 hours per response.

Respondents/Affected Entities: Boat manufacturers.

Estimated Number of Respondents: 45.

Frequency of Response: Initially, occasionally, semiannually and annually.

Estimated Total Annual Hour Burden: 10,343.

Estimated Total Annual Cost: There are no annualized capital/startup costs or O&M costs associated with this ICR.

EPA will consider any comments received and may amend any of the above ICRs, as appropriate. Then the final ICR packages will be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue one or more **Federal Register** notices pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR(s) to OMB and the opportunity to submit additional comments to OMB. If you have any questions about any of the above ICRs or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: June 26, 2009.

Lisa C. Lund,

Director, Office of Compliance.

[FR Doc. E9–16134 Filed 7–7–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8927–9]

EPA Office of Children's Health Protection and Environmental Education Staff Office; Notice of Public Meetings for the National Environmental Education Advisory Council

AGENCY: Environmental Protection Agency.

ACTION: Notice of meetings.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) Office of Children's Health Protection and Environmental Education Office hereby gives notice that the National Environmental Education Advisory Council will hold public meetings by conference call on the 2nd Wednesday of each month, beginning with August 12, 2009 from 12 p.m. to 1 p.m. All times noted are eastern time. The purpose of these meetings is to provide the Council with the opportunity to advise the Environmental Education Division on its implementation of the National Environmental Protection Act of 1990. Requests for the draft agenda will be accepted up to 1 business day before the meeting.

DATES: This notice is applicable for the following dates:

- August 12, 2009.
- September 9, 2009.
- October 14, 2009.
- November 11, 2009.
- December 9, 2009.
- January 13, 2009.

SUPPLEMENTARY INFORMATION: Participation in the conference calls will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the call from Ginger Potter, the Designated Federal Officer, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Any member of the public interested in receiving a draft meeting agenda may contact Ginger Potter via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: For information regarding this Notice, please contact Ms. Ginger Potter, Designated Federal Officer (DFO), EPA National Environmental Education Advisory Council, at *potter.ginger@epa.gov* or (202) 564–0453. General information concerning NEEAC can be found on the EPA Web site at: *http://www.epa.gov/enviroed*. For information on access or services for individuals with disabilities, please contact Ginger Potter as directed above. To request accommodation of a disability, please contact Ginger Potter, preferable at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: January 15, 2009.

Ginger Potter,

Designated Federal Officer.

Editorial Note: This document was received in the Office of the Federal Register on July 2, 2009.

[FR Doc. E9–16075 Filed 7–7–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8927–5]

National Drinking Water Advisory Council Request for Climate Ready Water Utilities Working Group Nominations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) is announcing the formation of the Climate Ready Water Utilities Working Group (CRWUWG) of the National Drinking Water Advisory Council, and soliciting all interested persons or organizations to nominate qualified individuals to serve on the working group. For a general description of the working group charge, the criteria for selecting working group members, and the specific directions for submitting working group member nominations, please see the **SUPPLEMENTARY INFORMATION** section.

DATES: Submit nominations via U.S. mail on or before August 7, 2009.

ADDRESSES: Address all nominations to Lauren Wisniewski, National Drinking Water Advisory Council Climate Ready Water Utilities Working Group, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water, Water Security Division (Mail Code 4608T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: E-mail your questions to Lauren Wisniewski, *wisniewski.lauren@epa.gov,* or call 202–564–2918.

SUPPLEMENTARY INFORMATION:

Background: The Agency's *National Water Program Strategy: Response to Climate Change* (2008) identified the need to provide drinking water and

wastewater utilities with easy-to-use resources to assess the risk associated with climate change and to identify potential adaptation strategies. EPA proposes to establish a Climate Ready Water Utilities program that will enable water and wastewater utilities to develop and implement long-range plans that account for climate change impacts. The program recognizes that any comprehensive approach to climate change must include both adaptation and mitigation. It should also engage a broad range of water sector stakeholders. The National Drinking Water Advisory Council (NDWAC), established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*), provides practical and independent advice, consultation and recommendations to the Agency on the activities, functions and policies related to the implementation of the Safe Drinking Water Act. On May 28, 2009, NDWAC voted on and approved the formation of the Climate Ready Water Utilities Working Group. After this working group completes its charge, it will make recommendations to the full NDWAC. The full NDWAC will, in turn, make appropriate recommendations to the EPA.

Working Group Charge: The charge for the Climate Ready Water Utilities Work Group (CRWUWG) is to evaluate the concept of ''Climate Ready Water Utilities'' and provide recommendations to the full NDWAC on the development of an effective program for drinking water and wastewater utilities, including recommendations to: (1) Define and develop a baseline understanding of how to use available information to develop climate change adaptation and mitigation strategies, including ways to integrate this information into existing complementary programs such as the Effective Utility Management and Climate Ready Estuaries Program; (2) Identify climate change-related tools, training, and products that address short-term and long-term needs of water and wastewater utility managers, decision makers, and engineers, including ways to integrate these tools and training into existing programs; and (3) Incorporate mechanisms to provide recognition or incentives that facilitate broad adoption of climate change adaptation and mitigation strategies by the water sector into existing EPA Office of Water recognition and awards programs or new recognition programs.

Selection Criteria: The EPA is looking to create a diverse CRWUWG. Potential CRWUWG nominations could include individuals from stakeholder organizations such as wastewater and drinking water utilities, State and local officials, public health officials, environmental organizations, academia, and climate experts. The Agency is looking for a range of utility representation in terms of the size of the population served, geographic location, as well as investor- and publicly-owned and operated facilities. This is not an exhaustive list; it is only intended to provide a framework to consider potential nominees.

Potential nominees should possess the following qualifications: Occupy a senior position within their organization; have broad experience outside their current position; demonstrate experience dealing with public policy issues; have extensive experience with and understanding of water utilities; and be knowledgeable on climate change. CRWUWG members should: Be recognized experts in their fields; be as impartial and objective as possible; collectively represent an array of backgrounds and perspectives within the water sector and related disciplines; and be available to fully participate in the working group.

The schedule remains flexible; however, it is estimated that the first CRWUWG meeting will be convened in the fall of 2009, and subsequent meetings will be conducted over a relatively short time frame, approximately one year. Over the course of this period, CRWUWG members will be asked to attend up to five meetings, participate in conference calls and video-conferencing as necessary, participate in the discussion of key issues at all meetings, and review and finalize the products and outputs of the working group.

Nomination of a Member: Any interested person or organization may nominate qualified individuals for membership to the working group. All nominees should be identified by their name, occupation, position, address, and telephone number. To be considered, all nominations must include a current resume providing the nominee's background, experience and qualifications, in addition to a statement (not to exceed two (2) paragraphs) about their particular expertise and interest in potential climate change impacts on water utilities. Please note that the Agency will not formally acknowledge or respond to nominations. Additional sources may be utilized in the solicitation of nominees.

Dated: June 26, 2009.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. E9–16006 Filed 7–7–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0191; FRL–8422–6]

Organic Arsenicals; Notice of Receipt of Requests to Voluntarily Cancel or to Amend to Terminate Uses of Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by the registrants to voluntarily cancel and/or amend their registrations to terminate uses of certain products containing the pesticide organic arsenicals. The organic arsenicals include the pesticides monosodium methanearsonate (MSMA), disodium methanearsonate (DSMA), calcium acid methanearsonate (CAMA), and cacodylic acid and its sodium salt. The requests would terminate the following uses of MSMA: Residential; forestry; non-bearing fruit and nuts; citrus, bearing and non-bearing; bluegrass, fescue and ryegrass grown for seed; drainage ditch banks; railroad, pipeline, and utility rights of way; fence rows; storage yards; and similar non-crop areas. In addition, the requests terminate all uses of MSMA in Florida except for use on cotton grown in Calhoun, Columbia, Escambia, Gadsden, Hamilton, Holmes, Jackson, Jefferson, Okaloosa, Santa Rosa, Suwannee, Walton, and Washington counties. The requests would not terminate the last MSMA products registered for use in the United States. These requests for voluntary cancellation and amendment of MSMA containing products are the result of an agreement in principle signed by the EPA and the technical registrants of the organic arsenicals on January 16 and February 5, 2009. As part of the agreement, the registrants have requested voluntary cancellation of all products containing DSMA, CAMA, and cacodylic acid and its sodium salt. The requests would terminate the last DSMA, CAMA, and cacodylic acid and its sodium salt products registered for use in the United States. EPA intends to grant these requests at the close of the comment period for this announcement

unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests within this period. Upon acceptance of these requests, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before August 7, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0191, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0191. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Tom Myers, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8589; fax number: (703) 308–8005; e-mail address: *myers.tom@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background on the Receipt of Requests to Cancel and/or Amend Registrations to Delete Uses

This notice announces receipt by EPA of requests from registrants to cancel or amend organic arsenical product registrations. The organic arsenicals are herbicides registered for application to cotton, bearing and non-bearing fruit and nut trees, commercial turf, golf courses, athletic fields, parks and residential lawns among other sites. In letters received by the Agency, the registrants have requested EPA to cancel affected product registrations and/or to amend to terminate uses of pesticide product registrations identified in this notice in Tables 1 and 2. Specifically, the registrants have requested voluntary cancellation of all products containing DSMA, CAMA, cacodylic acid and its

sodium salt. In addition, the registrants have requested that certain uses of MSMA be terminated in accordance with the agreement in principle. The requests would terminate the following uses of MSMA: Residential; forestry; non-bearing fruit and nuts; citrus, bearing and non-bearing; bluegrass, fescue and ryegrass grown for seed; drainage ditch banks; railroad, pipeline, and utility rights of way; fence rows; storage yards; and similar non-crop areas. In addition, the requests terminate all uses of MSMA in Florida except for use on cotton grown in Calhoun, Columbia, Escambia, Gadsden, Hamilton, Holmes, Jackson, Jefferson, Okaloosa, Santa Rosa, Suwannee, Walton, and Washington counties. The requests would not terminate the last MSMA products registered for use in the United States. The requests would terminate the last DSMA, CAMA, and cacodylic acid and its sodium salt products registered for use in the United States.

III. What Action is the Agency Taking?

This notice announces receipt by the Agency of requests from registrants to cancel or amend to terminate uses of organic arsenicals product registrations. The affected products and the registrants making the requests are identified in Tables 1–3 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The organic arsenical registrants have requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed requests.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued canceling or amending the affected registrations.

TABLE 1.—ORGANIC ARSENICAL PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration Number	Product Name	Chemical Name
239-2510	Ortho Crabgrass Killer Formula II	CAMA
239-2572	Ortho Crabgrass Killer Spray	CAMA
538-10	Scotts Summer Crabgrass Control	DSMA
538-169	Scotts Spot Grass and Weed Control	Cacodylic acid
		Cacodylic acid, sodium salt
538-178	Scotts Post Emergent Crabgrass Control	MSMA
769-635	SMCP MSMA 70W Liquid MSMA Plus Surfactant	MSMA
769-636	SMCP MSMA 70 Liquid	MSMA
769-637	SMCP MSMA 6.66	MSMA
769-664	X-CEL Veg Kil	Cacodylic acid
		Cacodylic acid, sodium salt
769-705	SMCP MSMA HC 8 Liquid High Concentrate	MSMA
769-916	Science Grass and Weed Top-Killer	Cacodylic acid
		Cacodylic acid, sodium salt
769-975	Liquid Edger Herbicide	Cacodylic acid
		Cacodylic acid, sodium salt
869-175	Green Light Liquid Edger	Cacodylic acid
		Cacodylic acid, sodium salt
869-243	Green Light MSMA Crabgrass Killer 2	MSMA
2217-229	Selective Crabgrass Killer Contains DSMA	DSMA
2217-434	Crabgrass Killer	DSMA
2217-512	Nutgrass Killer	MSMA
2217-513	Crabgrass Killer	MSMA

TABLE 1.—ORGANIC ARSENICAL PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration Number	Product Name	Chemical Name
2217-630	Gordon's Crabgrass and Nutgrass Killer	MSMA
2217-808	EH 795 Residential Herbicide	MSMA
		2,4-D dimethylamine salt
		Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmetharamine (1:1)
		Propanoic acid 2-(4-chloro-2-methylphenoxy)-, (R) compd with N-methylmetharamine (1:1)
2217-815	EH 1335 Herbicide	MSMA
		2,4-D dimethylamine salt
		Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmetharamine (1:1)
		Propanoic acid 2-(4-chloro-2-methylphenoxy)-, (R) compd with N-methylmetharamine (1:1)
2217-830	EH 1378 Herbicide	MSMA
		2,4-D dimethylamine salt
		Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmetharamine (1:1)
		Propanoic acid 2-(4-chloro-2-methylphenoxy)-, (R) compd with N-methylmetharamine (1:1)
5481-67	Alco Ho No Mo Liquid	Cacodylic acid
		Cacodylic acid, sodium salt
5481-227	DSMA Liquid Plus Surfactant	DSMA
5481-228	MSMA 40 Plus Surfactant	MSMA
5481-229	MSMA 60 Plus Surfactant	MSMA
5481-230	MSMA 66 Concentrate	MSMA
5481-231	MSMA 80 Concentrate	MSMA
5887-172	Improved Crabgrass Killer	MSMA
5905-67	MSMA Arsonate Liquid	MSMA
5905 GA-82-0011	MSMA Arsonate Liquid	MSMA
7401-23	Ferti-Lome Crabgrass and Dallis Grass Killer	MSMA
7401-246	Hi-Yield Super Decimate+Surfactant	MSMA
7401-366	Ferti-Lome Improved Bermuda Grass Killer	MSMA
		Cacodylic acid, sodium salt
8660-48	Crabgrass Killer	DSMA
8660-63	Clean-Up Herbicide	Cacodylic acid
		Cacodylic acid, sodium salt
8660-120	Vertagreen Crabgrass &Weed Killer	MSM
8660-121	Greenup Nutgrass &Chickweed Killer	MSMA
9779-86	Riverside 612 Herbicide	MSMA
9779-96	Riverside 120 Herbicide	MSMA

TABLE 1.—ORGANIC ARSENICAL PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration Number	Product Name	Chemical Name
9779-128	DSMA Herbicide	DSMA
9779-155	Riverside 145 Herbicide	MSMA
9779-170	Riverside MSMA 4	MSMA
9779-174	Riverside DSMA Liquid Plus Surfactant	DSMA
9779-317	Prometryne+MSMA	MSMA
		Prometryn
10088-74	Lawn and Turf Weed Control	MSMA
19713-45	Drexel DSMA Liquid	DSMA
19713-113	Drexel DSMA 81P	DSMA
19713-117	Drexel Kack Herbicide	Cacodylic acid
		Cacodylic acid, sodium salt
19713-141	Drexel Ezy-Pickin Cotton Defoliant	Cacodylic acid
		Cacodylic acid, sodium salt
19713-153	Kack Plus MSMA Herbicide	MSMA
		Cacodylic acid
		Cacodylic acid, sodium salt
19713-162	MSMA 6 Tree Killer	MSMA
19713-276	IDA, INC. DSMA Slurry	DSMA
19713-311	Pearson's Easy-Edger and Cleaner	Cacodylic acid
		Cacodylic acid, sodium salt
19713-530	Drexel DSMA 81 Dry Powder	DSMA
19713-532	DSMA Slurry	DSMA
19713-533	Super Dal-E-Rad Calar	CAMA
19713-534	APC Holdings DSMA Liquid	DSMA
19713-535	APC Holdings DSMA Liquid 4	DSMA
28293-234	Unicorn Liquid Edger	Cacodylic acid
		Cacodylic acid, sodium salt
28293-361	Unicorn Weed Edger	Cacodylic acid
		Cacodylic acid, sodium salt
33955-510	Acme Weed Killer Nonselective Herbicide for General Weed Control	Cacodylic acid
		Cacodylic acid, sodium salt
33955-553	Acme Ready-To Use Weed & Grass Killer	Cacodylic acid
		Cacodylic acid, sodium salt
42519-4	Cacodylate 3.25	Cacodylic acid
		Cacodylic acid, sodium salt
42519-8	Sodium Cacodylate Solution	Cacodylic acid

TABLE 1.—ORGANIC ARSENICAL PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration Number	Product Name	Chemical Name
		Cacodylic acid, sodium salt
42519-10	Leaf-All	Cacodylic acid
		Cacodylic acid, sodium salt
46515-1	Liquid Fence & Grass Edger	Cacodylic acid
		Cacodylic acid, sodium salt
46515-12	Super K-Gro Ready-to-Use Crabgrass Killer	CAMA
59144-20	Liquid Edger Ready-to-Use	Cacodylic acid
		Cacodylic acid, sodium salt
61483-19	DSMA Liquid	DSMA
61483-20	Super Arsonate	MSMA
61483-25	Ansar 529 HC Herbicide	MSMA
61483-40	DSMA 4	DSMA
72155-1	Herbicide 3D RTU	MSMA
		2,4-D dimethylamine salt
		Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmetharamine (1:1)
		Propanoic acid 2-(4-chloro-2-methylphenoxy)-, (R) compd with N-methylmetharamine (1:1)
72155-3	Lawn Herbicide TN Concentrate	MSMA
		2,4-D dimethylamine salt
		Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmetharamine (1:1)
		Propanoic acid 2-(4-chloro-2-methylphenoxy)-, (R) compd with N-methylmetharamine (1:1)
72155-5	Lawn Herbicide 3D Concentrate	MSMA
		2,4-D dimethylamine salt
		Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmetharamine (1:1)]
		Propanoic acid 2-(4-chloro-2-methylphenoxy)-, (R) compd with N-methylmetharamine (1:1)
72155-6	Lawn Herbicide 3D-40 Concentrate	MSMA
		2,4-D dimethylamine salt
		Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmetharamine (1:1)]
		Propanoic acid 2-(4-chloro-2-methylphenoxy)-, (R) compd with N-methylmetharamine (1:1)

TABLE 2.—ORGANIC ARSENICAL PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration Number	Product Name	Chemical name
2217-709	Quadmec Turf Herbicide	MSMA
		2,4-D dimethylamine salt
		Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmetharamine (1:1)
		Propanoic acid 2-(4-chloro-2-ethylphenoxy)-, (R) compd with N-methylmetharamine (1:1)
2217-797	EH 1143 Herbicide	MSMA
		MCPA, dimethylamine salt
		Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmetharamine (1:1)
		Propanoic acid 2-(4-chloro-2-ethylphenoxy)-, (R) compd with N-methylmetharamine (1:1)
5905-66	MSMA Plus	MSMA
5905-162	Helena Brand MSMA High Concentrate	MSMA
5905-164	MSMA Plus HC	MSMA
9779-133	Riverside 912 Herbicide	MSMA
19713-40	Drexar 530	MSMA
19713-41	Drexel MSMA 6.6	MSMA
19713-42	MSMA 6 Plus	MSMA
19713-151	Drexel MSMA 8	MSMA
19713-267	IDA, Inc. MSMA 4 Plus	MSMA
19713-269	IDA, Inc. MSMA 6.6	MSMA
19713-278	IDA, Inc. MSMA 6 Plus	MSMA
19713-528	Diumate	MSMA
		Diuron
19713-529	Drexel MSMA 600 Herbicide	MSMA
19713-531	Drexel MSMA 660	MSMA
19713-550	Drexel MSMA 120	MSMA
42519-1	Target 6.6	MSMA
42519-3	Target 6 Plus	MSMA
42750-28	Weed Hoe 120	MSMA
42750-29	Weed Hoe 108	MSMA
61483-13	Daconate	MSMA
61483-14	Daconate 6	MSMA
61483-15	Bueno-6	MSMA
61483-17	Daconate Super Brand	MSMA
61483-18	Bueno	MSMA
62719-339	MSMA 6.6	MSMA

TABLE 2.—ORGANIC ARSENICAL PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT—Continued

Registration Number	Product Name	Chemical name
62719-340	MSMA Plus S	MSMA
62719-343	MSMA 51%	MSMA

Table 3 of this unit includes the names and addresses of record for the registrants of the products listed in Table 1 and Table 2 of this unit.

TABLE 3.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

EPA Company No.	Company Name and Address
239	The Scotts Co., d/b/a/ The Ortho Group, PO Box 190, Marysville, OH 43040
538	The Scotts Co., 14111 Scottslawn Rd, Marysville, OH 43041
769	Value Gardens Supply, LLC d/b/a/ Value Garden Supply, PO Box 585, Saint Joseph, MO 64502
869	Valent GI Corp., c/o Valent USA Corp., Agent For: Green Light Co., 1600 Riviera Ave. Suite 200, Walnut Creek, CA 94596
2217	PBI/Gordon Corp., PO Box 014090, Kansas City, MO 64101-0090
5481	Amvac Chemical Corp., d/b/a/ Amvac, 4695 Macarthur Ct., Suite 1250, Newport Beach, CA 92660-1706
5887	Value Gardens Supply, LLC d/b/a/ Value Garden Supply, PO Box 585, Saint Joseph, MO 64502]
5905	Helena Chenical Co., 7664 Moore Rd., Memphis, TN 38120
7401	Mandava Associates, LLC, Agent for: Voluntary Purchasing Groups, Inc., N. Dallas Pkwy., Suite 200, Plano, TX 75024

TABLE 3.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS—Continued

EPA Company No.	Company Name and Address
8660	United Industries Corp., d/b/a Sylorr Plant Corp., PO Box 142642, St. Louis, MO 63114-0642
9779	Winfield Solutions, LLC, PO Box 64589, St. Paul, MN 55164-0589
10088	Athea Laboratories Inc., PO Box 240014, Milwaukee, WI 53224
19713	Drexel Chemical Co., PO Box 13327, Memphis, TN 38113-0327
28293	Phaeton Corp., d/b/a/ Unicorn Laboratories, PO Box 290, Madison, GA 30650
33955	PBI/Gordon Corp., PO Box 014090, Kansas City, MO 64101-0090
42519	Luxemborg-Pamol, Inc., 5100 Poplar Ave. Suite 2700, Memphis, TN 38137
42750	Albaugh Inc., 1525 NE 36th Street, Ankeny, IA 50021
46515	Celex, Division of United Industries Corp., PO Box 142642, St. Louis, MO 63114-0642
59144	RegWest Company, LLC, Agent for: Gro Tec, Inc., 30856 Rocky Rd. Greely, CO 80631-9375
61483	KMG-Bernuth, Inc., 9555 W. Sam Houston Pkwy South, Suite 600, Houston, TX 77099
62719	Dow Agrosciences LLC, 9330 Zionsville Rd 308/2e, Indianapolis, IN 46268-1054

TABLE 3.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS—Continued

EPA Company No.	Company Name and Address
72155	Bayer Advanced, PO Box 12014, 2 TW Alexander Dr., Research Triangle Park, NC 27709

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of Organic Arsenicals

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before August 7, 2009. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. In any order issued in response to these requests for cancellation of product registrations, EPA proposes to include the following provisions for the treatment of any existing stocks of the

products identified or referenced in Table 1 in Unit III.

In any order issued in response to these requests for amendments to terminate uses, the Agency proposes to include the following provisions for the treatment of any existing stocks of the products identified or referenced in Table 2 in Unit III.

The registrants have requested voluntary cancellation of the arsenic registrations identified in Table 1 and voluntary amendment to terminate certain uses of the arsenic registrations identified in Table 2. Pursuant to section 6(f) of FIFRA, EPA intends to grant the requests for voluntary cancellation and amendment.

As outlined in the organic arsenicals Agreement in Principle the following existing stocks dates are being proposed. EPA encourages stakeholders to submit comments on these existing stocks timeframes. Comments will be evaluated and the final existing stocks timeframes will be incorporated into the cancellation order which will be published in the **Federal Register.**

After December 31, 2009, registrants would be prohibited from selling or distributing existing stocks of products containing MSMA labeled for all uses, except cotton, sod farms, golf courses, and highway rights-of-way. Also, after December 31, 2009, registrants would be prohibited from selling or distributing existing stocks of products containing DSMA, CAMA, cacodylic acid and its sodium salt.

After June 30, 2010, persons other than registrants would be prohibited from selling or distributing existing stocks of products containing MSMA labeled for all uses, except cotton, sod farms, golf courses, and highway rights-of-way, and products containing DSMA, CAMA, and/or cacodylic acid and its sodium salt.

After December 31, 2010, use of products containing MSMA labeled for all uses, except cotton, sod farms, golf courses, and highway rights-of-way and products containing DSMA, CAMA, cacodylic acid and its sodium salt would be prohibited.

After December 31, 2012, registrants would be prohibited from selling or distributing existing stocks of products containing MSMA labeled for use on sod farms, golf courses, and highway rights-of-way.

After June 30, 2013, persons other than registrants would be prohibited from selling or distributing existing stocks of products containing MSMA labeled for use on sod farms, golf courses, and highway rights-of-way.

After December 31, 2013, use of products containing MSMA labeled for all uses, except cotton, would be prohibited.

If the request for voluntary cancellation and use termination is granted, the Agency intends to publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 30, 2009.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E9–16054 Filed 7–7–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0399; FRL–8423–4]

Pesticide Products; Registration Application for a New Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product that proposes a new use for its active ingredient pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before August 7, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0399, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0399. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Andrew Bryceland, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number:

(703)305-6928; e-mail address: *bryceland.andrew@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA received an application as follows to register a pesticide product that proposes a new use for one of its currently registered active ingredients. Notice of receipt of this application does not imply a decision by the Agency on the applications.

A. Product Proposing the New Use/Changed Use Pattern For Certain of the Active Ingredients.

File Symbol: 84592-R. *Applicant*: Japan Ecologia, Co., Ltd.; Wing 410 Building; 4-10-8 Sendagaya; Shibuya-ku Tokyo 151-0051, Japan; *Designated U.S. representative*: Pyxis Regulatory Consulting, Inc. 4110 136th St. NW; Gig Harbor, WA 98332. *Product name*: ByLohas Pestcontroller. *Active ingredient*: Insecticide and Azadirachtin at 0.66%. *Proposal classification/Use*: None. A. Bryceland).

B. Description of the New Use/Changed Use Patter Represented by the Above-mentioned Proposed Product Registration Application

This notice is being issued because the proposed pesticide product (i.e., EPA File Symbol 84592-R) contains the active ingredient, azadirachtin, whose inclusion in this proposed insecticide product represents a new use pattern for this active ingredient, and well as the first public health claim (i.e., cockroach control) for this active ingredient.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: June 19, 2009.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E9–15808 Filed 7–7–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8921–4]

Program Requirement Revisions Related to the Public Water System Supervision Programs for the Commonwealth of Massachusetts and the State of Rhode Island

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commonwealth of Massachusetts and the State of Rhode Island are in the process of revising their respective approved Public Water System Supervision (PWSS) programs to meet the requirements of the Safe Drinking Water Act (SDWA).

The Commonwealth of Massachusetts has adopted drinking water regulations for the Long Term 1 Enhanced Surface Water Treatment Rule (67 FR 1812) promulgated on January 14, 2002. After review of the submitted documentation, EPA has determined that the Commonwealth of Massachusetts' Long Term 1 Enhanced Surface Water Treatment Rule is no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve Massachusetts' PWSS program revision for this rule.

The State of Rhode Island has adopted drinking water regulations for the Interim Enhanced Surface Water Treatment Rule (63 FR 69478) promulgated on December 16, 1998, the Long Term 1 Enhanced Surface Water Treatment Rule (63 FR 69389) promulgated on December 16, 1998, and the Radionuclides Rule (66 FR 76708–76753) promulgated on December 7, 2000. After review of the submitted documentation, EPA has determined that these rules are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve Rhode Island's PWSS program revision for these rules.

DATES: All interested parties may request a public hearing for any of the above EPA determinations. A request for a public hearing must be submitted within thirty (30) days of this **Federal Register** publication date to the Regional Administrator at the address

shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator.

However, if a substantial request for a public hearing is made by this date, a public hearing will be held. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become final and effective 30 days after the publication of this **Federal Register** Notice.

Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination; (3) information that the requesting person intends to submit at such hearing; and (4) the signature of the individual making the request, or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, at the following office(s): U.S. Environmental Protection Agency, Office of Ecosystem Protection, One Congress Street, 11th floor, Boston, MA 02114.

For documents specific to that State: MA Department of Environmental Protection, Division of Water Supply, 1 Winter Street, 6th Floor, Boston, MA 02108.

Rhode Island Department of Public Health, Division of Drinking Water Quality, 3 Capitol Hill, Providence, RI 02908–5097.

FOR FURTHER INFORMATION CONTACT: Stafford Madison, U.S. EPA—New England, Office of Ecosystem Protection (telephone 617–918–1622).

Authority: Section 1401 (42 U.S.C. 300f) and Section 1413 (42 U.S.C. 300g–2) of the Safe Drinking Water Act, as amended (1996), and (40 CFR 142.10) of the National Primary Drinking Water Regulations.

Dated: June 12, 2009.

Ira W. Leighton,

Acting Regional Administrator, EPA—New England.

[FR Doc. E9–16130 Filed 7–7–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8928–1]

EPA Office of Children's Health Protection and Environmental Education Staff Office; Request for Nominations of Candidates for the National Environmental Education Advisory Council

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) Office of Children's Health Protection and Environmental Education Staff Office is soliciting applications of environmental education professionals for consideration on the National Environmental Education Advisory Council (NEEAC). There are currently three vacancies on the Advisory Council that must be filled: one State Department of Education (2009–2012); one Primary and Secondary Education (2009–2012) and one senior American (2009–2012). Additional avenues and resources may be utilized in the solicitation of applications.

DATES: Applications should be submitted by August 24, 2009 per instructions below.

ADDRESSES: Submit non-electronic application materials to Ginger Potter, Designated Federal Officer, National Environmental Education Advisory Council, U.S. Environmental Protection Agency, Office of Children's Health Protection and Environmental Education (MC:1704A), 1200 Pennsylvania Ave., NW., Washington, DC 20460, Ph: 202–564–0453, FAX: 202–564–2754, e-mail: *potter.ginger@epa.gov*.

FOR FURTHER INFORMATION CONTACT: For information regarding this Request for Nominations, please contact Ms. Ginger Potter, Designated Federal Officer (DFO), EPA National Environmental Education Advisory Council, at *potter.ginger@epa.gov* or (202) 564–0453. General information concerning NEEAC can be found on the EPA Web site at: *http://www.epa.gov/enviroed*.

SUPPLEMENTARY INFORMATION:

Background: Section 9 (a) and (b) of the National Environmental Education Act of 1990 (Pub. L. L–101–619) mandates a National Environmental Education Advisory Council. The Advisory Council provides the Administrator with advice and recommendations on EPA implementation of the National Environmental Education Act. In general, the Act is designed to increase public understanding of environmental issues and problems, and to improve the training of environmental education professionals. EPA will achieve these goals, in part, by awarding grants and/or establishing partnerships with other Federal agencies, State and local education and natural resource agencies, not-for-profit organizations, universities, and the private sector to encourage and support environmental education and training programs. The Council is also responsible for preparing a national biennial report to Congress that will describe and assess the extent and quality of environmental education, discuss major obstacles to improving environmental education, and identify the skill, education, and training needs for environmental professionals.

The National Environmental Education Act requires that the Council be comprised of eleven (11) members appointed by the Administrator of EPA. Members represent a balance of perspectives, professional qualifications, and experience. The Act specifies that members must represent the following sectors: primary and secondary education (one of whom shall be a classroom teacher)—two members; colleges and universities—two members; business and industry—two members; nonprofit organizations involved in environmental education—two members; State departments of education and natural resources—one member each; senior Americans—one member. Members are chosen to represent various geographic regions of the country, and the Council strives for a diverse representation. The professional backgrounds of Council members should include education, science, policy, or other appropriate disciplines. Each member of the Council shall hold office for a one (1) to three (3) year period. Members are expected to participate in up to two (2) meetings per year and monthly or more conference calls per year. Members of the Council shall receive compensation and allowances, including travel expenses, at a rate fixed by the Administrator.

Expertise Sought: The NEEAC staff office seeks candidates with demonstrated experience and/or knowledge in any of the following environmental education issue areas: (a) Integrating environmental education into State and local education reform and improvement; (b) State, local and Tribal level capacity building; (c) cross-sector partnerships; (d) leveraging resources for environmental education; (e) design and implementation of environmental education research; (f)

evaluation methodology; professional development for teachers and other education professionals; and (g) targeting under-represented audiences, including low-income, multi-cultural, senior citizens and other adults.

The NEEAC staff office is also looking for individuals who demonstrate the ability to make the time commitment, strong leadership skills, strong analytical skills, strong communication and writing skills, the ability to stand apart and evaluate programs in an unbiased manner, team players, have the conviction to follow-through and to meet deadlines, and the ability to review items on short notice.

How to Submit Applications: Any interested and qualified individuals may be considered for appointment on the National Environmental Education Advisory Council. Applications should be submitted in electronic format to the Designated Federal Officer *potter.ginger@epa.gov*) and contain the following: contact information including name, address, phone and fax numbers and an e-mail address; a curriculum vita or resume; the specific area of expertise in environmental education and the sector/slot the applicant is applying for; recent service on other national advisory committees or national professional organizations; and a one-page commentary on the applicant's philosophy regarding the need for, development, implementation and/or management of environmental education nationally. Additionally, a supporting letter of endorsement is required. This letter may also be submitted electronically as described above.

Persons having questions about the application procedure or who are unable to submit applications by electronic means, should contact Ginger Potter, DFO, at the contact information provided above in this notice. Non-electronic submissions must contain the same information as the electronic. The NEEAC Staff Office will acknowledge receipt of the application. The NEEAC Staff Office will develop a short list for more detailed consideration. Short list candidates will be required to fill out the Confidential Disclosure Form for Special Government Employees Serving Federal Advisory Committees at the U.S. Environmental Protection Agency (EPA Form 3110–48). This confidential form allows government officials to determine whether there is a statutory conflict between that person's public responsibilities (which include membership on a Federal advisory committee) and private interests and activities and the appearance of a lack of impartiality as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110-48.pdf.*

Dated: June 24, 2009.

Ginger Potter,

Designated Federal Officer.

[FR Doc. E9–16073 Filed 7–7–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8928–2]

EPA Science Advisory Board Staff Office Request for Nominations of Experts To Augment the Environmental Economics Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The SAB Staff Office is requesting the nomination of experts to augment the Environmental Economics Advisory Committee (EEAC) to review an EPA white paper on deriving estimates for the value of mortality risk reduction for use in cost-benefit analysis of EPA rules and regulations.

DATES: Nominations should be submitted by July 29, 2009, per instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Request for Nominations may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 343–9867; by fax at (202) 233–0643; or via e-mail at *Stallworth.holly@epa.gov.* General information concerning the EPA Science Advisory Board can be found on the EPA SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The U.S. Environmental Protection Agency (EPA) historically has used a value of statistical life (VSL) to express the benefits of mortality risk reductions in monetary terms for use in benefit cost analyses of its rules and regulations. EPA has used a central default value (adjusted for inflation) in its primary analyses since 1999. Since then, EPA's National Center for Environmental Economics (NCEE) has sought advice from the SAB Environmental Economics Advisory Committee (SAB–EEAC) on various approaches to deriving VSL, including the use of meta analysis and appropriate methodologies for valuing life extensions of different lengths. EPA is now preparing a white paper which proposes a revision of the VSL based on recent literature as well as historical advice from the EEAC. NCEE has requested an SAB peer review of the white paper, which will include a description of the approach used for deriving estimates for mortality risk valuation, a list of selection criteria detailing how the Agency selected studies for inclusion in the analysis, and the VSL that results from the revised approach. Background information on the use of VSL in EPA analyses may be found at *http://yosemite.epa.gov/ee/epa/eed.nsf/webpages/Mortality%20Risk%20Valuation.html.*

The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. In response to NCEE's request, the SAB Staff Office will augment the SAB Environmental Economics Advisory Committee (EEAC) with additional experts to review EPA's draft paper on VSL. The current membership of the EEAC may be found at *http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommitteesSubcommittees/Environmental%20Economics%20Advisory%20Committee.* The augmented EEAC will comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate EPA and SAB procedural policies. Upon completion, the panel's report will be submitted to the chartered SAB for final approval for transmittal to the EPA Administrator.

Request for Nominations: The SAB Staff Office is requesting nominations of nationally recognized experts with expertise in the valuation of mortality risk reduction, including the use of stated preference and revealed preference (i.e., hedonic wage) methods for estimating the value of mortality risk reductions. In addition, we also seek nominations of nationally recognized individuals with expertise in meta-analytic techniques.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals for possible service on the augmented EEAC in the areas of expertise described above. Nominations should be submitted in electronic format (which is preferred over hard copy) following the instructions for ''Nominating Experts to Advisory Panels and Ad Hoc Committees Being Formed'' provided on the SAB Web site. The form can be accessed through the ''Nomination of Experts'' link on the blue navigational bar on the SAB Web

site at *http://www.epa.gov/sab.* To receive full consideration, nominations should include all of the information requested.

EPA's SAB Staff Office requests contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vitae; sources of recent grant and/or contract support; and a biographical sketch of the nominee indicating current position, educational background, research activities, and recent service on other national advisory committees or national professional organizations.

Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Dr. Holly Stallworth, DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than July 29, 2009.

The EPA SAB Staff Office will acknowledge receipt of nominations. The names and biosketches of qualified nominees identified by respondents to the **Federal Register** notice and additional experts identified by the SAB Staff will be posted on the EPA SAB Web site at *http://www.epa.gov/sab.* Public comments on this ''Short List'' of candidates will be accepted for 21 calendar days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office, a balanced subcommittee or review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In establishing the augmented EEAC, the SAB Staff Office will consider public comments on the ''Short List'' of candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for Panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; and (e) skills working in committees, subcommittees and advisory panels; and, for the Panel as a whole, (f) diversity of, and balance among, scientific expertise, viewpoints, etc.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110-48.pdf.*

The approved policy under which the EPA SAB Office selects subcommittees and review panels is described in the following document: *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA–SAB–EC–02–010), which is posted on the SAB Web site at *http://www.epa.gov/sab/pdf/ec02010.pdf.*

Dated: July 1, 2009.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E9–16131 Filed 7–7–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0143; FRL–8423–2]

FED Consulting, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to FED Consulting, Inc. in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). FED Consulting, Inc. has been awarded multiple contracts to perform work for OPP, and access to this information will enable FED Consulting, Inc. to fulfill the obligations of the contract.

DATES: FED Consulting, Inc. will be given access to this information on or before July 13, 2009.

FOR FURTHER INFORMATION CONTACT: Felicia Croom, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0786; e-mail address: *croom.felicia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0143. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr.*

II. Contractor Requirements

Under these contract numbers, the contractor will perform the following:

Under Contract No. EP–W–08–053, FED Consulting, Inc. was acquired to provide official records support and maintenance to the nine offices within the Office of Enforcement Compliance and Assurance (OECA). This maintenance includes inventory and retirement of records and the development and revision of OECA's records guidance manual. OECA has a wide range of specialized records which

include but are not limited to compliance and enforcement records, air monitoring and forecasting records, investigations and surveillance of environmental criminal records, and environmental and environmental remediation records. OECA has general records which include, but are not limited to: Publications; annual reports; Freedom of Information Act and administrative records.

This contract involves no subcontractors.

The OPP has determined that the contract described in this document involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with FED Consulting, Inc., prohibits use of the information for any purpose not specified in this contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, FED Consulting, Inc. is required to submit, for EPA approval, a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to FED Consulting, Inc. until the requirements in this document have been fully satisfied. Records of information provided to FED Consulting, Inc. will be maintained by EPA Project Officers for this contract. All information supplied to FED Consulting, Inc. by EPA for use in connection with this contract will be returned to EPA when FED Consulting, Inc. has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: June 19, 2009.

Steven Bradbury,

Acting Director, Office of Pesticide Programs.

[FR Doc. E9–15935 Filed 7–7–09; 8:45 a.m.]

BILLING CODE 6560–50–S

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act; Notice of Meeting

DATE AND TIME: Wednesday, July 15, 2009, 10 a.m. Eastern Time.

PLACE: Commission Meeting Room on the First Floor of the EEOC Office Building, 131 ''M'' Street, NE., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes, and

2. Recent Developments under the Age Discrimination in Employment Act.

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. Seating is limited and it is suggested that visitors arrive 30 minutes before the meeting in order to be processed through security and escorted to the meeting room. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above. *Contact Person for More Information:* Stephen Llewellyn, Executive Officer, on (202) 663–4070.

Dated: July 2, 2009.

Stephen Llewellyn,

Executive Officer, Executive Secretariat.

[FR Doc. E9–16132 Filed 7–6–09; 4:15 pm]

BILLING CODE 6570–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewals; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following continuing collections of information titled:

1. Home Mortgage Disclosure Act (HMDA) (3064–0046);

2. Public Disclosure by Banks (3064–0090);

3. Notice Required of Government Securities Dealers or Brokers (Insured State Nonmember Banks) (3064–0093);

4. Notice Regarding Unauthorized Access to Customer Information (3064–0145); and

5. Applicant Background Questionnaire (3064–0138)

DATES: Comments must be submitted on or before September 8, 2009.

ADDRESSES: Interested parties are invited to submit written comments by any of the following methods. All comments should refer to the name and number of the collection:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *E-mail: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Herbert J. Messite (202.898.6834), Counsel, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the OMB Desk Officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Herbert J. Messite, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collections of information:

1. *Title:* Home Mortgage Disclosure Act (HMDA).

OMB Number: 3064–0046.

Form Number: None.

Frequency of Response: On occasion.

Affected Public: Insured state nonmember banks.

Estimated Number of Responses: 1,890,384

Estimated Time per Response: 5 minutes.

Total Annual Burden: 157,532 hours.

General Description of Collection: To permit the FDIC to detect discrimination in residential mortgage lending, certain

insured state nonmember banks are required by FDIC regulation 12 CFR part 338 to maintain various data on home loan applicants.

2. *Title:* Public Disclosure by Banks.

OMB Number: 3064–0090.

Form Number: None.

Frequency of Response: On occasion.

Affected Public: Insured state nonmember banks.

Estimated Number of Respondents: 5,050.

Estimated Time per Response: 0.5 hours.

Total Annual Burden: 2,525 hours.

General Description of Collection: 12 CFR part 350 requires a bank to notify the general public, and in some instances shareholders, that financial disclosure statements are available on request. Required disclosures consist of financial reports for the current and preceding year, which can be photocopied directly from the year-end call reports. Also, on a case-by-case basis, the FDIC may require that descriptions of enforcement actions be included in disclosure statements. The regulation allows, but does not require, the inclusion of management discussions and analysis.

3. *Title:* Notices Required of Government Securities Dealers or Brokers (Insured State Nonmember Banks).

OMB Number: 3064–0093.

Form Number: G–FIN; G–FINW; G–FIN4; & G–FIN5.

Frequency of Response: On occasion.

Affected Public: Insured state nonmember banks acting as government securities brokers and dealers.

Estimated Number of Respondents: 49.

Estimated Time per Response: 1 hour.

Total Annual Burden: 49 hours.

General Description of Collection: The Government Securities Act of 1986 requires all financial institutions acting as government securities brokers and dealers to notify their Federal regulatory agencies of their broker-dealer activities, unless exempted from the notice requirement by Treasury Department regulation.

4. *Title:* Applicant Background Questionnaire.

OMB Number: 3064–0138.

Form Number: FDIC 2100/14.

Frequency of Response: On occasion.

Affected Public: FDIC job applicants who are not current FDIC employees.

Estimated Number of Respondents: 30,000.

Estimated Time per Response: 3 minutes.

Total Annual Burden: 900 hours.

General Description of Collection: The FDIC Applicant Background Questionnaire is completed voluntarily by FDIC job applicants who are not current FDIC employees. Responses to questions on the survey provide information on gender, age, disability, race/national origin, and to the applicant's source of vacancy announcement information. Data is used by the Office of Diversity and Economic Opportunity and the Personnel Services Branch to evaluate the effectiveness of various recruitment methods used by the FDIC to ensure that the agency meets workforce diversity objectives.

5. *Title:* Notice Regarding Unauthorized Access to Customer Information.

OMB Number: 3064–0145.

Form Number: None.

Frequency of Response: On occasion.

Affected Public: Insured state nonmember banks.

Number of FDIC Regulated Banks that will notify customers: 93

Estimated Time per Response: 29 hrs.

Annual Burden: 2,697 hours.

General Description of Collection: This collection reflects the FDIC's expectations regarding a response program that financial institutions should develop to address unauthorized access to or use of customer information that could result in substantial harm or inconvenience to a customer. The information collections require financial institutions to: (1) Develop notices to customers; and (2) in certain circumstances, determine which customers should receive the notices and send the notices to customers.

Request for Comment

Comments are invited on: (a) Whether these collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collections should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC, this 1st day of July 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–15976 Filed 7–7–09; 8:45 am]

BILLING CODE P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The FDIC is soliciting comment concerning its information collection titled, ''Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).''

DATES: Comments must be submitted on or before September 8, 2009.

ADDRESSES: Interested parties are invited to submit written comments by any of the following methods. All comments should refer to the name and number of the collection:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *E-mail: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Herbert J. Messite (202.898.6834), Counsel, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the OMB Desk Officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Herbert J. Messite, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following information collection:

Title: Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).

OMB Number: 3064–0152.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 5,260.

Estimated Time per Response: 16 hours.

Estimated Total Annual Burden: 84,160 hours.

General Description of the Collection: 12 CFR 334.82, 334.90, 334.91 and Appendix J to Part 334 implement sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), Public Law 108–159 (2003). Section 114 amended section 615 of the Fair Credit Reporting Act (FCRA) to require the OCC, FRB, FDIC, OTS, NCUA, and FTC (Agencies) to issue jointly (i) guidelines for financial institutions and creditors regarding identity theft with respect to their account holders and customers; (ii) regulations requiring each financial institution and creditor to establish reasonable policies and procedures for implementing the guidelines to identify possible risks to account holders or customers or to the safety and soundness of the institution or creditor; and (iii) regulations generally requiring credit and debit card issuers to assess the validity of change of address requests under certain circumstances. Section 315 amended section 605 of the FCRA to require the Agencies to issue regulations providing guidance regarding reasonable policies and procedures that a user of consumer reports must employ when a user receives a notice of address discrepancy from a consumer reporting agency (CRA). The information collections in Sec. 334.90 require each financial institution and creditor that offers or maintains one or more covered accounts to develop and implement a written Identity Theft Prevention Program (Program). In developing the Program, financial institutions and creditors are required to consider the guidelines in Appendix J to Part 334 and include those that are appropriate. The initial Program must be approved by the board of directors or an appropriate committee thereof and the board, an appropriate committee thereof or a designated employee at the level of senior management must be involved in the oversight of the Program. In addition, staff must be trained to carry out the Program. Pursuant to Sec. 334.91, each credit and debit card issuer is required to establish and implement policies and procedures to assess the validity of a change of address request under certain circumstances. Before issuing an additional or replacement card, the card issuer must notify the cardholder or use another means to assess the validity of the change of address. The information collections in Sec. 41.82 require each user of consumer reports to develop and implement reasonable policies and procedures designed to enable the user to form a reasonable belief that a consumer report relates to the consumer about whom it requested the report when the user receives a notice of address discrepancy from a CRA. A user of consumer reports must also develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed to be accurate to the CRA from which it receives a notice of address discrepancy when (1) the user can form a reasonable belief that the consumer report relates to the consumer about whom the user has requested the report; (2) the user establishes a continuing relationship with the consumer; and (3) the user regularly and in the ordinary course of business furnishes information to the CRA from which it received the notice of address discrepancy.

Request for Comment

Comments are invited on: (a) Whether these collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collections should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC, this 1st day of July 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldan,

Executive Secretary.

[FR Doc. E9–15977 Filed 7–7–09; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011689–011.

Title: Zim/CSCL Space Charter Agreement.

Parties: Zim Integrated Shipping Services, Ltd.; China Shipping Container Line Co., Ltd.; and China Shipping Container Lines (Hong Kong) Co., Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment reduces the allocation of space between the parties on certain services and eliminates allocations on others.

Agreement No.: 012072.

Title: NYK/Hanjin/Yang Ming Americas North-South Service Slot Charter Agreement.

Parties: Hanjin Shipping Co., Ltd.; Nippon Yusen Kaisha; and Yan Ming (America) Corp.

Filing Party: Doug Johnson, Director; Atlantic Trades TA and ANS; NYK Line; 300 Lighting Way 5th Floor; Secaucus, NJ 07094.

Synopsis: The agreement authorizes NYK to charter slots to Hanjin and Yang Ming on its Americas North South Service in the trade between the U.S. East Coast and the East Coast of Brazil.

Agreement No.: 201103–008.

Title: Memorandum Agreement of the Pacific Maritime Association of December 14, 1983 Concerning Assessments to Pay ILWU–PMA Employee Benefit Costs, As Amended, Through June 29, 2009.

Parties: Pacific Maritime Association and International Longshore and Warehouse Union.

Filing Party: David F. Smith, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 1850; Washington, DC 20036.

Synopsis: The amendment revises how the man-hour base assessment will be calculated.

Agreement No.: 201203.

Title: Port of Oakland/Oakland Marine Terminal Operator Agreement.

Parties: Eagle Marine Services, Ltd.; Port of Oakland; Seaside Transportation Service LLC; SSA Terminals (Oakland), LLC; Total Terminals International, LLC; Transbay Container Terminal, Inc.; and Trapac, Inc.

Filing Party: David F. Smith, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036, and Paul Heylman, Esq.; Saul Ewing LLP; 2600 Virginia Avenue, NW.; Suite 1000; Washington, DC 20037.

Synopsis: The agreement would authorize the parties to discuss, exchange information, and reach agreement regarding various matters pertaining to their operations at the Port of Oakland, including various aspects of the administration and operation of truck identification, the port's clean truck program, and compliance with requirements of the California Air Resources Board.

Dated: July 2, 2009.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. E9–16106 Filed 7–7–09; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

All West Coast Shipping Inc. dba West Coast Shipping, 1065 Broadway Avenue, San Pablo, CA 94806. *Officer:* Hwi (Henry) K. Cho, Vice President (Qualifying Individual).

Nippon Express U.S.A., Inc., 590 Madison Ave., Ste. 2401, New York, NY 10022–2524. *Officer:* Hirotaka Hara, Vice President (Qualifying Individual).

Worldunimax Logistics, Inc., 16901 S. Keegan Avenue, Carson, CA 90746. *Officer:* David J. Park, President (Qualifying Individual).

Logical Freight, Inc., 555 S. Isis Avenue, Inglewood, CA 90301. *Officer:* Ruben J. Gomez, President (Qualifying Individual).

Kls Logistics Group LLC, dba Key Logistics Solutions, 1563 NW. 82nd Avenue, Miami, FL 33126. *Officer:* Daniel A. Domaszewski, President (Qualifying Individual).

Levin & Haydak Investments, LLC, 2631 Industrial Way, Vineland, NJ 08360. *Officer:* Robert J. Haydak, Jr., Managing Partner (Qualifying Individual).

Marine Logistics Incorporated dba Petro, Marine International, 15110 Ripplewind Lane, Houston, TX 77068. *Officer:* Kathy L. Wilson, President (Qualifying Individual).

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Service Shipping, Inc. dba SSI Lines, 38104 Academy Drive, Lake Villa, IL 60046. *Officer:* William J. Marston, President (Qualifying Individual).

H T International, 281 E. Redondo Beach Blvd., Gardena, CA 90248. *Officer:* Glenda M. Valdez, President (Qualifying Individual).

Excel Cargo Services Inc. dba CaribEx Worldwide, 4248 Piedmont Parkway, Greensboro, NC 27410. *Officer:* Joseph R. Chatt, Jr., Vice President (Qualifying Individual).

Randall James Boud dba Godspeed Logistics, 344 Moyer Station Road, Schuylkill Haven, PA 17927. Sole Proprietor.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

CDS Air Freight, Inc., 107 Executive Drive, Ste. A, Dulles, VA 20166. *Officer:* Joseph J. Place, President (Qualifying Individual).

Diamond Logistics, LLC, 9500 S. De Wolf Avenue, Selma, CA 93662. *Officers:* Gerome C. Blomgren, Manager (Qualifying Individual), Bruce Lion, Member.

Dated: June 26, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–16108 Filed 7–7–09; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
017712N	Awell Logistics Group, Inc., 655 John Muir Drive, #E421, San Francisco, CA 94132	May 6, 2009.
004084N	Glory Express, Inc., 17420 S. Avalon Blvd., Suite 202, Carson, CA 90746	May 22, 2009.
013172N	Yung Hoon Kim dba Conex International, 20695 So. Western Ave., Suite 136, Torrance, CA 90501	April 10, 2009.
016706N	Inter-Trade Liner Shipping Co., Inc., 2111 W. Crescent Ave., Suite E, Anaheim, CA 92801	June 5, 2009.
018694N	Global Parcel System LLC, 8304 Northwest 30th Terrace, Miami, FL 33122	April 11, 2009.
002355F	Pro-Service Forwarding Co., Inc., 901 W. Hillcrest Boulevard, Inglewood, CA 90301	March 6, 2009.
021444N	J & V International Shipping Corp., 806 Arcadia Ave., Ste. 4, Arcadia, CA 91007	June 5, 2009.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E9–16104 Filed 7–7–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0107]

Federal Acquisition Regulation; Information Collection; Notice of Radioactive Materials

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding the reinstatement of a previously existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR), Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Notice of Radioactive Materials.

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 8, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0107, Notice of Radioactive Materials, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. William Clark, Procurement Analyst, Contract Policy Division, GSA, (202) 219–1813.

A. Purpose

The clause at FAR 52.223–7, Notice of Radioactive Materials, requires contractors to notify the Government prior to delivery of items containing radioactive materials. The purpose of the notification is to alert receiving activities that appropriate safeguards may need to be instituted. The notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the contractor which will put users of the items on notice as to the hazards involved.

B. Annual Reporting Burden

Respondents: 500.
Responses per Respondent: 5.
Annual Responses: 2,500.
Hours per Response: 1.
Total Burden Hours: 2,500.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0107, Notice of Radioactive Materials, in all correspondence.

Dated: June 23, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–15978 Filed 7–7–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–09–0788]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Registry of Unexplained Fatiguing Illnesses and Chronic Fatigue Syndrome (CFS) in and around Bibb County, Georgia, (OMB No. 0920–0788)—Extension—National Center for Zoonotic, Vector-borne and Enteric Diseases (NCZVED), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC has been conducting a provider-based Registry for unexplained fatiguing illnesses and CFS for almost one year. During this time, the objective of the registry was to identify persons with unexplained fatiguing illnesses, including CFS, who access the healthcare system and endorse referral criteria: Age 12 to 59 years with ≥1 month of severe fatigue plus one other core CFS symptom and no exclusionary conditions. Eligible patients undergo a telephone interview to assess symptoms and exclusionary criteria. If they meet age and exclusionary criteria and endorse ≥6 months of symptoms, they are invited for a 1-day clinical evaluation, including a physical exam, collection of specimens (blood, urine and saliva), and psychiatric interview to further assess exclusionary conditions, and answer self-administered questionnaires to measure symptoms, functioning and exposure to potential risk factors. Over 800 health-care providers of various medical and alternative medicine specialties have enrolled and have referred over 50 patients.

CDC plans to continue to enroll patients in the Registry study using the same protocol. Specific aims of the

registry are: (1) Continue to identify and enroll patients with CFS and other unexplained fatiguing illnesses who are receiving medical and ancillary medical care and describe their epidemiologic and clinical characteristics; (2) assess and monitor the health care providers' knowledge, attitudes, and beliefs concerning CFS; (3) and to identify well-characterized CFS patients for future clinical studies and intervention trials. These specific aims require inclusion of subjects in early stages of CFS (i.e., ill less than one year duration) who can be followed longitudinally to assess changes in their CFS symptoms; persons with longer duration of fatigue will also be eligible.

There is no cost to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Respondent	Number of respondents	Number of responses per respondent	Average burden per response (hours)	Total burden (hours)
Referring Providers	200	2	5/60	33
Patient consent to be contacted	340	1	10/60	57
Patient Telephone Interview	289	1	44/60	212
Patient Clinical Evaluation	221	1	9	1,989
Total Burden				2,291

Dated: June 30, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–16141 Filed 7–7–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 23, 2009, from 8 a.m. to approximately 4 p.m.

Location: Hilton Hotel Washington DC North/Gaithersburg, Montgomery Ballroom, 620 Perry Pkwy., Gaithersburg, MD 20877.

Contact Person: Christine Walsh or Denise Royster, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512391. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss clinical trials to support use of vaccines against the 2009 H1N1 influenza virus.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*, click on the year 2009 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before July 16, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before July 15, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 9, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Christine Walsh or Denise Royster at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 29, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9–16099 Filed 7–7–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Neuro Aids.

Date: July 13, 2009.

Time: 11 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Francois Boller, MD, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *bollerf@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Treatment of Mental Illnesses.

Date: July 14, 2009.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Francois Boller, MD, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *bollerf@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 1, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16091 Filed 7–7–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Unsolicited SARS Virus Program Project Review.

Date: July 30, 2009.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Clayton C. Huntley, PhD, Scientific Review Officer, Scientific Review Program, National Institutes of Health/NIAID, Room 3124, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–451–2570. *chuntley@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 1, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16097 Filed 7–7–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental & Craniofacial Research Special Emphasis Panel. Review R25s.

Date: August 6, 2009.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Mary Kelly, Scientific Review Officer, Scientific Review Branch, National Institute of Dental & Craniofacial Research, NIH 6701 Democracy Blvd., Room 672, MSC 4878, Bethesda, MD 20892–4878. 301–594–4809. *mary_kelly@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: July 1, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16102 Filed 7–7–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 20, 2009, 8 a.m. to July 21, 2009, 6 p.m., Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036, which was published in the **Federal Register** on June 26, 2009, 74 FR 30597–30598.

The meeting will be held at the Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: June 30, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16110 Filed 7–7–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel.

Date: July 22–24, 2009.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington DC/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Prabha L. Atreya, PhD, Chief, Office of Scientific Review, National Center on Minority Health and Health Disparities, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (301) 594–8696, *atreyapr@mail.nih.gov*.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel; R13/K99.

Date: August 12, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6706 Democracy Blvd., Suite 800, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Prabha L. Atreya, PhD, Chief, Office of Scientific Review, National Center on Minority Health and Health Disparities, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (301) 594–8696, *atreyapr@mail.nih.gov*.

Dated: June 30, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16125 Filed 7–7–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; TINSAL–2D Ancillary and Supplement Applications.

Date: July 15, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Thomas A. Tatham, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 30, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16124 Filed 7–7–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 20, 2009, 8:30 a.m. to July 21, 2009, 5 p.m., Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037 which was published in the **Federal Register** on June 26, 2009, 74 FR 30597–30598.

The meeting will be held at the Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: June 30, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16122 Filed 7–7–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 20, 2009, 8:30 a.m. to July 21, 2009, 5 p.m., Doubletree Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005 which was published in the **Federal Register** on June 26, 2009, 74 FR 30597–30598.

The meeting will be held at the Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: June 30, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16120 Filed 7–7–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 20, 2009, 8 a.m. to July 21, 2009, 6 p.m., Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037 which was published in the **Federal Register** on June 26, 2009, 74 FR 30597–30598.

The meeting will be held at the Palomar Hotel, 2121 P Street, NW., Washington, DC 20037. The meeting dates and time remain the same. The meeting is closed to the public.

Dated: June 30, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16118 Filed 7–7–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel. Enhancing Research Capacity (P30's) (ARRA).

Date: July 27–28, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: Jeffrey H. Hurst, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7214, Bethesda, MD 20892–7924. 301–435–0303. *hurstj@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel. NHLBI Grand Opportunities in Monitoring Health Disparities (ARRA).

Date: July 29–30, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Charles Joyce, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892–7924. 301–435–0288. *cjoyce@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel. NHLBI Grand Opportunities in Phase II Clinical Trials (ARRA).

Date: July 30–31, 2009.

Time: 7 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Shelley S. Sehnert, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892–7924. 301–435–0303. *ssehnert@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel. NHLBI Grand Opportunities in Characterizing Differentiated Stem Cells (ARRA).

Date: July 31, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Robert T. Su, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892–7924. 301–435–0297. *sur@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: June 30, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16115 Filed 7–7–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Drug Discovery, Biomarkers and Therapy.

Date: July 14, 2009.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892. (301) 435–1767. *gubanics@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Tumor Drug Development.

Date: July 15–16, 2009.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Manzoor Zarger, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892. (301) 435–2477. *zargerma@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Review of Bioengineering Research Partnership Applications.

Date: July 15, 2009.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street at Sutter, San Francisco, CA 94102.

Contact Person: Antonio Sastre, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, MSC 7412, Bethesda, MD 20892. 301–435–2592. *sastrea@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Therapy ARRA–CA.

Date: July 16, 2009.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lawrence Ka-Yun Ng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892. 301–435–1719. *ngkl@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Competitive Supplements.

Date: July 17, 2009.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Denver, 650 15th Street, Denver, CO 80202.

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7852, Bethesda, MD 20892. (301) 435–1168. *montalve@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chemistry and Biophysics Competitive Revisions A.

Date: July 22–23, 2009.

Time: 9 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John L. Bowers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892. (301) 435–1725. *bowersj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR09–118: High-End Instrumentation Grant Program: Flow Cytometry.

Date: July 23–24, 2009.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Elena Smirnova, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892. 301–435–1236. *smirnove@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mental Health and Neurodegenerative Disorders Members Conflict.

Date: July 23–24, 2009.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Suzan Nadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892. 301–435–1259. *nadis@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Biology ARRA CR.

Date: July 23–24, 2009.

Time: 11 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892. 301–435–1779. *riverase@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, BDPE Competing Revisions.

Date: July 27–28, 2009.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michael H. Chaitin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892. (301) 435–0910. *chaitinm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Nature's Solutions.

Date: July 27–28, 2009.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892. (301) 435–1210. *chaudhaa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chemistry and Biophysics Competitive Revisions B.

Date: July 27–28, 2009.

Time: 9 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John L. Bowers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892. (301) 435–1725. *bowersj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Shared Instrumentation: Calorimeters.

Date: July 27–28, 2009.

Time: 10 a.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Denise Beusen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7806, Bethesda, MD 20892. (301) 435–1267. *beusend@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Competitive Revision: Genetic Variation and Evolution.

Date: July 28, 2009.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: David J. Remondini, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892. 301–435–1038. *remondid@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Special Topics in Molecular Sciences.

Date: July 30–31, 2009.

Time: 7:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington DC/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Donald L. Schneider, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7842, Bethesda, MD 20892. (301) 435–1727. *schneidd@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 30, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16112 Filed 7–7–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Pain, Morphine and the Developing Brain: School Age Outcomes.

Date: July 31, 2009.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Peter Zelazowski, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Rm. 5B01, Bethesda, MD 20892–7510, 301–435–6902, *peter.zelazowski@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 30, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16109 Filed 7–7–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.) notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. App., as amended. The purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for type 1 diabetes. The outcome of the evaluation will be a decision whether NIDDK should support the request and make available contract resources for development of the potential therapeutic to improve the treatment or prevent the development of type 1 diabetes and its complications. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Type 1 Diabetes—Rapid Access to Intervention Development Special Emphasis Panel; National Institute of Diabetes and Digestive and Kidney Diseases.

Date: July 22, 2009.

Time: 11 a.m.–1 p.m.

Agenda: To evaluate requests for preclinical development resources for potential new therapeutics for type 1 diabetes and its complications.

Place: 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dr. Myrlene Staten, Senior Advisor, Diabetes, Translation Research, Division of Diabetes, Endocrinology and Metabolic Diseases, NIDDK, NIH, 6707 Democracy Boulevard, Bethesda, MD 20892–5460, 301–402–7886.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 98.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 1, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16100 Filed 7–7–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel; ARRA Research Networking.

Date: August 20, 2009.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Guo Zhang, PhD, Scientific Review Officer, National Center for Research Resources, or National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1064, Msc 4874, Bethesda, MD 20892–4874, 301–435–0812, *zhanggu@mail.nih.gov*.

Name of Committee: National Center for Research Resources Special Emphasis Panel; ARRA Resource Discovery.

Date: August 21, 2009.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Guo Zhang, PhD, Scientific Review Officer, National Center for Research Resources, or National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1064, Msc 4874, Bethesda, MD 20892–4874, 301–435–0812, *zhanggu@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Award, National Institutes of Health, HHS)

Dated: July 1, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–16095 Filed 7–7–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 20, 2009, from 8 a.m. to 6 p.m. and on July 21, 2009, from 9 a.m. to 12 noon.

Location: Hilton Washington DC North/Gaithersburg, Grand Ballroom, 620 Perry Pkwy., Gaithersburg, MD 20877, 301–977–8900.

Contact Person: William Freas or Pearline K. Muckelvene, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike (HFM–71), Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014519516. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On July 20, 2009, in the morning, the committee will review proposed strategies to demonstrate the effectiveness of new coral snake antivenoms. In the afternoon, the committee will discuss alternative clinical and surrogate endpoints for evaluating efficacy of Alpha-1 Proteinase Inhibitor (Human) augmentation therapy in Alpha-1 antitrypsin deficiency. Alpha-1 antitrypsin deficiency is a genetic condition associated with decreased circulating levels of alpha-1 antitrypsin that significantly increases the risk of serious lung disease (i.e. emphysemia) in adults. On July 21, 2009, the committee will hear updates on the following topics: The April 30 to May 1, 2009, meeting of the Department of Health and Human Services Advisory Committee on Blood Safety and Availability (*http://www.hhs.gov/ophs/bloodsafety/index.html*); the June 12, 2009, meeting of the FDA Transmissible Spongiform Encephalopathies Advisory Committee (*http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/BloodVaccinesandOtherBiologics/TransmissibleSpongiformEncephalopathiesAdvisoryCommittee/ucm129559.htm*); and an overview of the epidemiology and virology of the 2009 A/H1N1 influenza virus and its impact on the U.S. blood system. The committee will also hear informational presentations on recent public and private hemovigilance efforts, including the pilot hemovigilance module in the National Healthcare Safety Network.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*, scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before July 15, 2009. Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11 a.m. and between approximately 3:45 p.m. and 5 p.m. on July 20, 2009, and between approximately 11:30 a.m. and 12 noon on July 21, 2009. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before July 13, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 8, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact William Freas or Pearline K. Muckelvene at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

FDA regrets that it was unable to publish this notice 15 days prior to the July 20, 2009, Blood Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Blood Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 29, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9–16101 Filed 7–7–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Advisory Committee for Pharmaceutical Science and Clinical Pharmacology; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee for Pharmaceutical Science and Clinical Pharmacology.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held August 5, 2009, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD. The hotel telephone number is 301–589–5200.

Contact Person: Paul Tran, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *paul.tran@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572) in the Washington, DC area), code 3014512539. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will: (1) Receive a status update from the Office of Generic Drugs (OGD) on bioequivalence for highly variable drugs (highly variable means that the rate and amount of the drug entering blood varies significantly from one administration to another); (2) receive presentations from the Office of Pharmaceutical Science (OPS) on the scientific and regulatory challenges of Transdermal Drug Delivery Systems (TDDS); (3) receive presentations from OPS and discuss current thinking on ''Classifying Pre-Surgical Preparations as Sterile Products'' in consideration of how these products are used; and (4) be updated by OPS on the current status of the International Conference on Harmonization (ICH) Quality Topics [i.e., those relating to chemical and pharmaceutical quality assurance (stability testing, impurity testing, etc.)], and outline the role of the ICH Implementation Work Group (Q IWG), its future activities, and any remaining gaps and challenges.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*, click on the year 2009 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before July 21, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before July 13, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 14, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Paul Tran at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 29, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9–16136 Filed 7–7–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Office of Clinical and Preventive Services; Division of Behavioral Health; the Methamphetamine & Suicide Prevention Initiative for American Indian and Alaska Native Urban Programs

Announcement Type: New.

Funding Announcement Number: HHS–2009–IHS–METHU–0002.

Catalog of Federal Domestic Assistance Number(s): 93.933.

Key Dates: Application Deadline Date: July 31, 2009.

Review Date: August 6–7, 2009.

Earliest Anticipated Start Date: August 14, 2009.

Table of Contents

I. Funding Opportunity Description

The Indian Health Service (IHS) announces competitive grant applications for the Methamphetamine & Suicide Prevention Initiative (MSPI) for American Indian and Alaska Native (AI/AN) Urban Program communities. This program is authorized under the Snyder Act, 25 U.S.C. 13, and 25 U.S.C. 1602(a)(b)(9)(11)(12) of the Indian Health Care Improvement Act (IHCIA), as amended. This program is described at 93.933 in the Catalog of Federal Domestic Assistance. The purpose of the MSPI–U is to expand community-level access to effective, Urban AI/AN methamphetamine and/or suicide prevention and treatment programs. Resources will enhance evidence-based or practice-based methamphetamine and/or suicide prevention or treatment programs and/or community mobilization programs. The methamphetamine and suicide prevention or treatment funding will be used to:

- Provide community-focused responses that enhance evidence-based or practice based methamphetamine and/or suicide prevention or treatment services or education programming;

• Coordinate services for communities to respond to their local methamphetamine and/or suicide crises;

• Participate in a nationally coordinated program focusing specifically on increasing access to methamphetamine and/or suicide prevention or treatment related activities among the Federal partners, Areas, Tribes, States, and academic or not-for-profit programs;

• Provide communities with needed resources to develop their own community-focused programs with preference for coordinated programming that maximizes the impact across communities and Tribal groups;

• Establish baseline data information related to methamphetamine abuse/suicides in the local communities;

• Adequately document the level of need for the community; and

• Promote programs that will ensure measureable impact.

Awardees' activities for this program are as follows:

• Develop a three (3) year action plan. Applicants must document how their methamphetamine and/or suicide prevention or treatment activities will be implemented as soon as possible but no later than six (6) months after award. The remainder of Year One, Year Two, and Year Three will focus on implementation. The primary intent of the action plan should be to illustrate how the applicant will enhance community access to or support community delivery of evidence-based or practice-based methamphetamine and/or suicide prevention or treatment services. The action plan should describe the project implementation process. The action plan should include objectives that are specific, measurable, achievable, relevant, and time-phased. Objectives should demonstrate adherence to the Government Performance and Results Act of 1993 (GPRA), where applicable. The implementation process may be guided by a community action organization, collaboration, or a group of partners to plan and implement a community-wide methamphetamine and/or suicide prevention or treatment project. If such partnerships or collaborations are already in place, provide a description of how they intend to expand their scope to include the implementation of the methamphetamine and/or suicide prevention or treatment project. Relevant partnerships working closely with and developing collaborations for the MSPI–U may include smaller urban organizations which combine their resources to implement this project. ''Relevant partnerships'' can be defined as developing cooperative agreements and/or Memorandums of Agreement that clearly defines how the collaboration will be conducted.

• Collaborations may also include other partners to share resources and information that could strengthen the program.

• The action plan should focus on developing or enhancing and implementing community-based, evidence or practice-based methamphetamine and/or suicide prevention or treatment strategies. The action plan for the community prevention or treatment program should include the proposed best and promising practices being implemented, identify information sharing processes, and define and identify interactive group activities, data collection (*i.e.* Resource and Patient Management System), evaluation, and ongoing quality assurance improvement processes. The project should include culturally appropriate behavioral, policy, and community approaches to methamphetamine and/or suicide prevention or treatment.

• Applicants must attend one (1) mandatory MSPI–U grantee meeting per year. The budget submitted should reflect travel costs for the project director and the local evaluator to attend this meeting. Location (city/hotel) and time frame for this meeting will be provided after award; however the meeting will generally last two to three days and attendance is mandatory. At these meetings, grantees will present the results of their projects and Federal staff will be available to provide technical assistance.

• Applicants must participate in a national evaluation of this project. Each grantee shall coordinate with their national MSPI project officer. The grantee shall work with the IHS staff and national MSPI project officer to develop a local process to measure specific outcome measures as consistent with national GPRA measures and IHS Division of Behavioral Health (DBH) program requirements.

• Up to a maximum of 20 percent of grant funds may be used to develop or enhance the grantee's local evaluation capacity for the purposes of meeting MSPI data collection requirements. All applicants will be required to employ the use of the Resource and Patient Management System (RPMS) and the RPMS behavioral health module or IHS Electronic Health Record. If applicant is unable to utilize the RPMS as an information management system, the applicant should demonstrate within the application how they will satisfy the data collection requirements. Applicants will also be required to adhere to any and all GPRA requirements, where applicable.

• Other costs in conjunction with the evaluation of this project may include training (onsite and off-site), conference calls, and information sharing using e-mail and/or faxing materials.

• Applicants are expected to publicize their activities in the affected communities. The action plan may include:

• Identification of one to three environmental issues that community members have stated need to be addressed in order to promote the prevention and/or treatment of methamphetamine abuse and/or suicide. There should be some record that this has been identified as an issue that needs to be addressed. This may include local newspapers, Tribal Council meetings, Town Hall meetings, or radio programs.

• Community programs should inform their community about the program and its goals and the baseline data for the outcome indicators. The program should establish a time frame and setting to share their progress with the community. The settings could include regular programs on the radio station, monthly newspaper reports or newsletter mailings, or one or more graph or 'thermometer' type billboards or centrally placed posters that track progress.

• The action plan should include a community gathering that is held to close out the project with an accounting of the progress by indicators and dialogue about next steps.

II. Award Information

Type of Awards: Grant.

Estimated Funds Available: The total amount identified for fiscal year (FY) 2008 is $1,103,000; FY 2009 is $1,103,000 Grand total of $2,206,000. The awards are for 12 months in each budget period. The awards are subject to the availability of funds.

Anticipated Number of Awards: An estimated eleven (11) two-year awards will be approved for funding with the amounts identified for FY 2008 and FY 2009. The existing awardees will apply for competing continuation awards for continued funding. Continuation awards will be made based on program performance. Contingent on appropriation of funds, the amount of awards in the third year will continue at the same level as year one and two under this Program Announcement.

Project Period: Three (3) Years.

Award Amount: $100,000, per year.

III. Eligibility Information

1. Eligible applicants are:

• Non-profit Urban Indian Organizations, as defined by 25 U.S.C. 1603(h).

Eligibility is limited to the aforementioned applicants because they have the necessary knowledge of, experience, and capability/capacity to work within the urban AI/AN communities to perform the required activities.

Applicants must provide a letter of support from the board of the urban Indian Organization. If there is insufficient time to procure such a letter of support prior to submitting the application, the letter must be submitted within six months after award. Place this documentation behind the first page of your application form.

2. Cost Sharing or Matching: The Methamphetamine & Suicide Prevention Initiative does not require matching funds or cost sharing.

Other Requirements:

A. If application budgets exceed the stated dollar amount that is outlined within this announcement; those applications will not be considered for funding.

B. The budget should include a budget narrative and justification for all cost outlined in the application for the budget period and should explain why each line item is necessary or relevant to the proposed project.

IV. Application and Submission Information

1. Applicant packages may be found at the Grants.gov Web site (*http://www.grants.gov*), or for a link to the package information go to the Grants Policy Staff Web site at *http://www.ihs.gov/NonMedicalPrograms/gogp/gogp_funding.asp.* Information regarding the electronic application process may be directed to Tammy G. Bagley, at (301) 443–6290. The entire application package and detailed application instructions are available at *http://www.grants.gov/index.jsp.*

2. Content and Form of Application Submission

a. You must submit a project narrative with your application package. The project narrative must be submitted in the following format:

• Maximum number of pages: 25. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.

• Font size: 12 point unreduced.

• Single spaced.

• 8½″ x 11″ paper.

• Page margin size: One inch.

Your narrative should address activities to be conducted over the entire project period. You must use the sections/headings listed below in developing your project narrative. Be sure to place the required information in the correct section, or it will not be considered.

Your application will be scored according to how well you address the requirements for each section of the project narrative. Your project narrative must include the following items in the order listed:

• Statement of Need

• Describe the target population as well as the geographic area to be served, and justify the selection of both. The target population should include AI/AN youth who are currently residing within a youth regional/residential treatment center or who have been discharged from a residential treatment center within the previous sixty (60) days. Include the numbers to be served and demographic information. Discuss the target population's language, beliefs, norms and values, as well as socioeconomic factors that must be considered in services to this population. Describe a brief history of the youth recidivism issues in the community and responses locally, within the Tribe and in the State.

• Document clearly whether this project will address the transitional/discharge or aftercare problem or decrease the rate of youth recidivism within the YRTC.

• Document the need for a transitional/discharge or aftercare project in the selected community which is experiencing increases in the rate of recidivism. This documentation of need may come from a variety of sources, and applicants are encouraged to provide as much quantifiable data related information about the increases as may be available.

• Show that identified needs are consistent with priorities of the Tribes, State, or county that has primary responsibility for the service delivery system.

• Describe the local resource organizations in the community.

• Depending on the type of project chosen, describe the local transitional/discharge or aftercare resources available to the project.

• Project Plan

• Clearly state the purpose, goals and objectives of your proposed project and how it addresses the target population and the geographic area being served.

• Describe how the project is to be implemented, including the roles of staff to be hired.

• Provide a realistic timeline for the project (chart or graph) showing key activities, milestones, and responsible staff. [**Note:** The timeline should be part of the project narrative. It should not be placed in an appendix.]

• If you plan to include an advisory body in your project, describe its membership, roles and functions, and frequency of meetings.

• Describe how members of the target population help prepare the application and how they will help plan, implement, and evaluate the project.

• Identify any other organizations that will participate in the proposed project. Describe their roles and responsibilities and demonstrate their commitment to the project. Include letters of commitment from community organizations supporting the project in the appendix.

• Show that the necessary groundwork (*e.g.,* planning, consensus development, development of memoranda of agreement) has been completed or is near completion so that the project can be implemented, and any prevention or treatment interventions can begin as soon as possible but no later than six (6) months after grant award.

• Describe any potential barriers to successful conduct of the proposed project and how you will overcome them.

• Describe your plan to ensure project sustainability when funding for this project ends. Also describe how program continuity will be maintained when there is a change in the operational environment (*e.g.,* staff turnover, change in project leadership) to ensure stability over time.

• Organizational Capacity

• Discuss the capability and experience of the applicant organization and other participating organizations with the target population. Provide Memoranda of Understanding or Letters of Agreement specifically for the proposed project from participating organizations in the appendix.

• Describe existing community infrastructure that addresses transitional/discharge or aftercare treatment.

• Provide a list of staff and position descriptions for those who will participate in the project, showing the role of each and their level of effort and qualifications. Include the project director and other key personnel, such as the local evaluator and prevention or treatment personnel.

• Describe the cultural characteristics of key staff and indicate if any are

members of the target population/community.

• Describe the resources available for the proposed project (*e.g.,* facilities, equipment), and provide evidence that services will be provided in a location that is adequate, accessible, compliant with the Americans with Disabilities Act (ADA), and amenable to the target population.

• Describe evidence of successful program management experience (see Criteria for more detail).

• Describe experience with other Federal, state, or private grants.

• Describe data collection experience and capacity for data storage. Clearly describe the project's information management system capabilities and history of its use (if any). Describe any plans to utilize the RPMS information management system with the implementation of this project. If applicant currently utilizes an alternate information management system or is unable to utilize RPMS as an information management system, the applicant should demonstrate within the application how they plan to satisfy the data collection requirements.

• Local Evaluation Capacity

• Grantees must evaluate their projects and are required to describe their evaluation plans in their applications. The evaluation should be designed to provide regular feedback to the project to improve services. The evaluation must include both process and outcome components. Process and outcome evaluations must measure change relating to project goals and objectives over time compared to baseline information. Describe evaluation experience with current or past community projects.

• State willingness to work with IHS evaluation consultant(s) in developing community-specific outcome measures for the local and national evaluation.

• Demonstrate evidence of having secured or plans to secure a qualified local evaluation consultant and/or part-time employee to conduct data collection and data entry (*e.g.,* resume position description).

• Describe plans for data collection, management, analysis, interpretation and reporting. Describe the existing approach to the collection of data, along with any necessary modifications. Be sure to include data collection instruments/interview protocols in an appendix format.

• Demonstrate how the evaluation will be integrated with requirements for collection and reporting of performance data (*e.g.,* RPMS and GPRA indicators, performance measures). Explain: How you will ensure privacy and confidentiality? Where data will be stored? Who will or will not have access to information and how the identity of participants will be kept private, for example, through the use of a coding system on data records, limiting access to records, or storing identifiers separately from data? Describe adequate consent procedures.

• Applicants must consider their evaluation plans when preparing the project budget. No more than 20% of the total grant award may be used for evaluation and data collection (this is not a research grant).

The evaluation must include both process and outcome components. Process and outcome evaluations must measure change relating to project goals and objectives over time compared to baseline information. Control or comparison groups are not required. Process components should address issues such as:

• How closely did the implementation match the plan?

• What types of deviations from the plan occurred?

• What led to the deviations?

• What effect did the deviations have on the planned intervention and evaluation?

• Who (program, staff) provided what services (modality, type, intensity, duration), to whom (individual characteristics), in what context (system, community), and at what cost (facilities, personnel, dollars)?

Outcome components should address issues such as:

	FY 2008	FY 2009	FY 2010
Outcome measure #1:			
The proportion of methamphetamine-using patients who enter a methamphetamine treatment program.	N/A	Baseline	Baseline.
Outcome measure #2:			
Reduce the incidence of suicidal activities (ideation, attempts) in AI/AN communities through prevention, training, surveillance, & intervention programs.	N/A	Baseline	Baseline.
Outcome measure #3:			
Reduce the incidence of methamphetamine abuse in AI/AN communities through prevention, training, surveillance, & intervention programs.	N/A	Baseline	Baseline.
Outcome measure #4:			
The proportion of youth who participate in evidence-based and/or promising practice prevention or intervention programs.	N/A	Baseline	Baseline.
Outcome measure #5:			
Establishment of trained suicide crisis response teams	N/A	Baseline	Baseline.
Outcome measure #6:			
Increase tele-behavioral health encounters	N/A	Baseline	Baseline.

• Budget Justification (will not be counted in the stated page limit). You must provide a narrative justification of the items included in your proposed budget, as well as a description of existing resources and other support you expect to receive for the proposed project. Be sure to show that no more than 20% of the total grant award will be used for data collection and evaluation.

Additional information shall be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

• Position descriptions for key personnel including local evaluator and data collection/data entry employees. If the evaluator will be subcontracted, include a letter of commitment with a current biographical sketch from the individual(s). Job descriptions should be no longer than one page each.

• Curriculum Vitae/Resume of key personnel (project director, evaluator (if identified). Resumes should be no longer than two (2) pages in length.

• Applicants must provide a letter of support from the board of the urban Indian organization.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a

grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call (866) 705–5711. For more information, see the IHS Web site at: *http://www.ihs.gov/od/pgo/funding/pubcommt.htm*.

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

3. Submission Dates and Times

Applications must be submitted electronically through Grants.gov by 12 a.m. midnight Eastern Daylight Time (E.D.T.) on the application deadline due date. If technical challenges arise and the applicant is unable to successfully complete the electronic application process, the applicant should contact Grants Policy Staff at (301) 443–6290 at least fifteen days prior to the application deadline and advise of the difficulties that your organization is experiencing. The grantee must obtain prior approval, in writing (e-mails are acceptable) allowing the paper submission. If submission of a paper application is requested and approved, the original and two copies may be sent to the Division of Grants Operations (DGO), 801 Thompson Avenue, TMP, Suite 360, Rockville, MD 20852, (301) 443–5204 by 12 midnight E.D.T. on the application deadline date. Applications not submitted through Grants.gov, without an approved waiver, may be returned to the applicant without review or consideration. Late applications will not be accepted for processing. They will be returned to the applicant and will not be considered for funding.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are allowable pending prior approval from the awarding agency. However, in accordance with 45 CFR part 74 all pre-award costs are incurred at the recipient's risk. The awarding office is under no obligation to reimburse such costs if for any reason the applicant does not receive an award or if the award to the recipient is less than anticipated.
- The available funds are inclusive of direct and appropriate indirect costs.
- IHS will not acknowledge receipt of applications.

6. Other Submission Requirements

Electronic Submission—The preferred method for receipt of applications is electronic submission through Grants.gov. However, should any technical challenges arise regarding the submission, please contact Grants.gov Customer Support at (800) 518–4726 or *support@grants.gov*. The Contact Center hours of operation are Monday–Friday from 7 a.m. to 9 p.m. E.D.T. The applicant must seek assistance at least fifteen days prior to the application deadline. Applicants that do not adhere to the timelines for Central Contractor Registry (CCR) and/or Grants.gov registration and/or requesting timely assistance with technical issues will not be a candidate for paper applications.

To submit an application electronically, please use the *http://www.Grants.gov* and select ''Apply for Grants'' link on the home page. Download a copy of the application package, on the Grants.gov Web site, complete it offline and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to IHS.

Please be reminded of the following:

- Under the new IHS application submission requirements, paper applications are not the preferred method. However, if you have technical problems submitting your application online, please contact Grants.gov Customer Support at: *http://www.grants.gov/CustomerSupport.*
- Upon contacting Grants.gov obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver request from Grants Policy must be obtained.
- If it is determined that a formal waiver is necessary, the applicant must submit a request, in writing (e-mails are acceptable), to *Michelle.Bulls@ihs.gov* that includes a justification for the need to deviate from the standard electronic submission process. Upon receipt of approval, a hard copy application package must be downloaded by the applicant from Grants.gov, and sent directly to the DGO, 801 Thompson Avenue, TMP, Suite 360, Rockville, MD 20852 on or before 12 midnight of the application deadline date.
- Upon entering the Grants.gov site, there is information available that outlines the requirements to the applicant regarding electronic submission of an application through Grants.gov, as well as the hours of operation. We strongly encourage all applicants not to wait until the deadline date to begin the application process through Grants.gov as the registration process for CCR and Grants.gov could take up to fifteen working days.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the CCR. You should allow a minimum of ten working days to complete CCR registration. See below for more information on how to apply.
- You must submit all documents electronically, including all information typically included on the SF–424 and all necessary assurances and certifications.
- Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by IHS.
- Your application must comply with any page limitation requirements described in the program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. DGO will download your application from Grants.gov and provide necessary copies to the cognizant program office. The DGO will not notify applicants that the application has been received.
- You may access the electronic application for this program on *http://www.Grants.gov*.
- You may search for the downloadable application package using either the CFDA number or the Funding Opportunity Number. Both numbers are identified in the heading of this announcement.
- The applicant must provide the Funding Opportunity Number: HHS–2009–IHS–METHU–0002.

E-mail applications will not be accepted under this announcement.

DUNS Number

Applicants are required to have a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call (866) 705–5711. Interested parties may wish to obtain their DUNS number by phone to expedite the process.

Applications submitted electronically must also be registered with the CCR. A DUNS number is required before CCR

registration can be completed. Many organizations may already have a DUNS number. Please use the number listed above to investigate whether or not your organization has a DUNS number. Registration with the CCR is free of charge.

Applicants may register by calling (888) 227–2423. Please review and complete the CCR Registration Worksheet located on *http://www.grants.gov/CCRRegister.*

More detailed information regarding these registration processes can be found at *http://www.grants.gov.*

V. Application Review Information

1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective, qualitative and quantitative, and must measure the intended process and outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

Project Plan (30) Points

- Comprehensively describe the proposed three (3) year project—5 Points;
- Comprehensively describe the project's objectives and activities—5 Points;
- Include a timeline of activities. Is the timeline provided comprehensive—5 Points;
- Comprehensively describe and identify potential problem areas or barriers and propose solutions—5 Points;
- Provide community focused responses that enhance evidence-based or practice-based methamphetamine and/or suicide prevention or treatment services or education programming—5 Points;
- Provide communities with needed resources to develop their own community-focused programs with preference for coordinated programming that maximizes the impact across communities and Tribal groups—5 Points.

Statement of Need (15) Points

- Provide an adequate baseline picture of the community—5 Points;
- Provide a good description and justification for the identified project target population—10 points.

Organizational Capacity (20) Points

- Describe the community infrastructure addressing methamphetamine and/or suicide treatment or prevention—10 Points;
- Comprehensively provide evidence of successful methamphetamine and/or suicide program management capability—5 Points;
- Adequately describe the project staffing, their expected tasks/roles, experience and training, and time commitment—5 Points.

Local Evaluation Capacity (25) Points

- Address applicable outcomes/output measures and how they relate to stated activities and objectives—10 Points;
- State a willingness to collaborate and submit data into the MSPI national evaluation process—2 Points;
- Demonstrate evidence of commitment to securing a qualified local evaluation/data collection/entry capacity. Provide documentation—5 Points;
- Demonstrate how the program will use a portion of awarded funds (not to exceed 20 percent) to develop or enhance funding recipients' local evaluation capacity—2 Points;
- Describe how the funding recipients will establish baseline data and information related to methamphetamine abuse/suicides in the local communities—2 Points;
- Demonstrate how the data collection and storage capacity adequately supports the program? If data collected is non-RPMS based, does the proposal describe how such data will be submitted to IHS/HQ—2 Points;
- Describe the local evaluation process in sufficient detail—2 Points.

National Evaluation Plan Capacity (10) Points

- State a willingness to participate in a nationally coordinated program focusing on increasing access to methamphetamine and/or suicide prevention or treatment related activities—5 Points;
- State a willingness to attend a minimum of one mandatory MSPI meeting per fiscal year—2 Points;
- State a willingness to participate in monthly/quarterly MSPI awardees conferences—3 Points.

2. Review and Selection Process

Each application will be reviewed by the DGO for eligibility, compliance with the announcement, and completeness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that meet eligibility requirements, are complete, and conform to this announcement will be subject to the competitive objective review and evaluation by an Ad Hoc Review Committee of Tribal, IHS, and other Federal or non-Federal reviewers. Applications will be reviewed against criteria. Reviewers will assign a numerical score to each application which will be used to rank applications. The review process will be directed by the DGO staff to ensure compliance with HHS and IHS grant review guidelines.

In addition, the following factors may affect the funding decision:

- Geographic diversity.

IHS will provide justification for any decision to fund out of rank order.

3. Anticipated Announcement and Award Dates

Awards will start on August 14, 2009.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) will be initiated by DGO and will be mailed via postal mail to each entity that is approved for funding under this announcement. The NoA will be signed by the Grants Management Officer and this is the authorizing document for which funds are dispersed to the approved entities. The NoA will serve as the official notification of the grant award and will reflect the amount of Federal funds awarded the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. The NoA is the legally binding document. Applicants who are approved but unfunded or disapproved based on their Objective Review score will receive a copy of the Executive Summary which identifies the weaknesses and strengths of the application submitted.

2. Administrative and National Policy Requirements

Grants are administrated in accordance with the following documents:

- This Program Announcement.
- 45 CFR Part 92, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments,'' or 45 CFR part 74, ''Uniform Administrative Requirements for Awards to Institutions

of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations.''

• HHS Grants Policy Statement, January 2007.

• OMB Circular A–87, ''State, Local, and Indian Tribal Governments,'' (Title 2 Part 225) or OMB Circular A–122, ''Non-Profit Organizations.'' (Title 2 Part 230).

• OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

3. Indirect-Cost Requirements

This section applies to all grant recipients that request reimbursement of indirect costs in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to have a current indirect cost rate agreement in place prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the agency or office. A current rate means the rate covering the applicable activities and the award budget period. If the current rate is not on file with the DGO at the time of award, the indirect cost portion of the budget will be restricted and not available to the recipient until the current rate is provided to DGO.

Generally, indirect costs rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) *http://rates.psc.gov/* and the Department of the Interior (National Business Center) *http://www.nbc.gov/acquisition/ics/icshome.html*. If your organization has questions regarding the indirect cost policy, please contact the DGO at (301) 443–5204.

4. Reporting

Progress Report. Semi-annual and annual report are required. A format will be provided. These reports will include a brief comparison of actual accomplishments to the goals established for the period, or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. Copies of any materials developed shall be attached. Semi-annual progress reports must be submitted within thirty (30) days of the end of the half year. An annual report must be submitted within thirty (30) days after the end of the 12 month time period.

Financial Status Report. Semi-annual financial status reports must be submitted within 30 days of the end of the half year. Final financial status reports are due within 90 days of expiration of the budget/project period. Standard Form 269 (long form) will be used for financial reporting.

Reports. Grantees are responsible and accountable for accurate reporting of the Progress Reports and Financial Status Reports which are generally due semi-annually. Financial Status Reports (SF–269) are due 90 days after each budget period and the final SF–269 must be verified from the grantee records on how the value was derived. Grantees must submit reports in a reasonable period of time.

Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

VII. Agency Contact(s)

We encourage inquiries concerning this announcement.

For program technical assistance, contact: Bryan E. Wooden, LICSW, LCSW–C, DCSW, Office of Clinical and Preventive Services, Director (Acting), Division of Behavioral Health, 801 Thompson Avenue, Reyes Building, Suite 300, Rockville, Maryland 20852, Telephone: (301) 443–2038, e-mail: *bryan.wooden@ihs.gov*.

For financial, grants management, or budget assistance, contact: Kimberly Pendleton, Senior Grants Management Officer, 801 Thompson Ave, Reyes Bldg, Suite 360, Rockville, MD 20852, Telephone: (301) 443–6290, e-mail: *kimberly.pendleton@ihs.gov*.

VIII. Other Information

This and other IHS funding opportunity announcements can be found on the IHS Web site, Internet address: *http://www.ihs.gov*. Click on ''Funding'' then ''Grants and Cooperative Agreements.''

Dated: June 26, 2009.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. E9–16045 Filed 7–7–09; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Office of Clinical and Preventive Services, Division of Behavioral Health; The Methamphetamine & Suicide Prevention Initiative for American Indian and Alaska Native Youth

Announcement Type: New.

Funding Announcement Number: HHS–2009–IHS–METHY–0001.

Catalog of Federal Domestic Assistance Number(s): 93.933.

DATES: *Key Dates: Application Deadline Date:* July 31, 2009.

Review Date: August 6–7, 2009.

Earliest Anticipated Start Date: August 14, 2009.

Table of Contents

I. Funding Opportunity Description

The Indian Health Service (IHS) announces competitive grant applications for the Methamphetamine & Suicide Prevention Initiative (MSPI) for American Indian and Alaska Native (AI/AN) Youth (MSPI–Y). This program is authorized under the Snyder Act, 25 U.S.C. 13, and 25 U.S.C. 1602(a) (b)(9)(11)(12); 25 U.S.C. 1621h(m) of the Indian Health Care Improvement Act (IHCIA), as amended. This program is described at 93.933 in the Catalog of Federal Domestic Assistance. The purpose of the MSPI–Y is to expand community-level access to effective methamphetamine and suicide prevention programs through Tribal, youth residential, transitional/discharge, and aftercare services. Resources will enhance existing transitional/discharge and aftercare programs with a specific focus on methamphetamine and suicide prevention. Funding for the MSPIY will be used to:

• Provide community-focused response grants that would allow Tribes and Tribal organizations to utilize the resources to enhance transitional/discharge and aftercare programming focused on methamphetamine and suicide prevention for youth discharged or who have the expectation of discharge from a residential setting to maintain sobriety within their home community.

• Participate in a nationally coordinated program focusing specifically on enhancing access to youth transitional/discharge and/or aftercare-related activities among Youth Regional Treatment Centers (YRTC) and those IHS or Tribal organizations, providing residential youth services for AI/AN youths.

• Provide communities with needed resources to develop their own transitional/discharge or aftercare-focused programs.

Awardees' activities for this program are as follows:

• Develop a three (3) year action plan. Applicants must document how their transitional/discharge or aftercare activities will be implemented as soon as possible but no later than six (6) months after award for Year One. Grantees will continue project activities with refinement of services and evaluation of activities for Year Two (2) and Year Three (3). The primary intent of the action plan should be to illustrate how the applicant will enhance community access to or support community delivery of evidence-based or practice-based transitional/discharge or aftercare services. The action plan should describe the project implementation process. The action plan should include objectives that are specific, measurable, achievable, relevant, and time-phased. Objectives should demonstrate adherence to the Government Performance and Results Act of 1993 (GPRA), where applicable. Relevant partnerships working closely with and developing collaborations for the MSPI–Y may include Tribes and/or Tribal organizations.

• Collaborations may also include other partners to share resources and information that could strengthen the program.

• The action plan should focus on developing or enhancing and implementing community-based, evidence, or practice-based transitional/discharge or aftercare treatment strategies. The action plan for the transitional/discharge or aftercare program should include the proposed best and promising practices being implemented, identify information sharing processes, and define and identify interactive group activities, data collection (*e.g.* Resource and Patient Management System), evaluation, and ongoing quality assurance improvement processes. The project should include culturally appropriate behavioral, policy, and community approaches to transitional/discharge or aftercare treatment.

• Applicants must attend one (1) mandatory MSPI–Y grantee meeting per year. The budget submitted should reflect travel costs for the project director to attend this meeting. Location (city/hotel) and time frame for this meeting will be provided at a later date; however, the meeting will generally last two to three days and attendance is mandatory. At these meetings, grantees will present the results of their projects and Federal staff will be available to provide technical assistance.

• Applicants must participate in a national evaluation of this project. Each grantee shall coordinate with their national MSPI–Y project officer. The grantee shall work with the IHS staff and national MSPI–Y project officer to develop a local process to measure specific outcome indicators as consistent with national GPRA and IHS Division of Behavioral Health (DBH) program requirements.

• Up to a maximum of 20 percent of grant funds may be used to develop or enhance the grantee's local evaluation capacity for the purpose of meeting MSPI data collection requirements. It is recommended that applicants employ the use of the Resource and Patient Management System (RPMS) and the RPMS behavioral health module or IHS Electronic Health Record, where available. If applicant is unable to utilize the RPMS as an information management system, the applicant should demonstrate within the application how they will satisfy the data collection requirements. Applicants will also be required to adhere to any and all GPRA requirements.

• Other costs in conjunction with the evaluation of this project may include training (onsite and off-site), conference calls, and information sharing using e-mail and/or faxing materials.

• Applicants are expected to publicize their activities in the affected communities. The action plan may include:

• Community programs should inform their community about the program and its goals and the baseline data for the outcome indicators. The program should establish a time frame and setting to share their progress with the community. The settings could include regular programs on the radio station, monthly newspaper reports, newsletter mailings, one or more graph or 'thermometer' type billboards, or centrally placed posters that track progress.

• The action plan should include a community gathering that is held to close out the project with an accounting of the progress by indicators and dialogue about next steps.

II. Award Information

Type of Awards: Grant.

Estimated Funds Available: The total amount identified for fiscal year (FY) 2008 is $300,000; FY 2009 is $300,000; Grand total of $600,000. The awards are for 12 months in each budget period. The awards are subject to the availability of funds.

Anticipated Number of Awards: An estimated three (3) two-year awards will be approved for funding with the amounts identified for FY 2008 and FY 2009. The existing awardees will apply for continuation awards for continued funding based on program performance. Contingent on appropriation of funds, the amount of awards in the third year will continue at the same level as year one and two under this Program Announcement.

Project Period: Three (3) Years.

Award Amount: $100,000 per year.

III. Eligibility Information

1. Eligible Applicants are:

• AI/AN Federally-recognized Tribes;

• Tribal organizations, as defined by the IHCIA, 25 U.S.C. 1603(e);

• Tribal consortia;

• Non-profit urban Indian organizations, as defined by 25 U.S.C. 1603(h);

• Applicants must provide proof of Federally-recognized status.

Eligibility is limited to the aforementioned applicants because they have the necessary knowledge of, experience, capability, capacity to work within the AI/AN communities to perform the required activities.

Tribal Resolution—A resolution of the Indian Tribe served by the project must accompany the application submission. This can be attached to the electronic application. An Indian Tribe that is proposing a project affecting another Indian Tribe must include resolutions from all affected Tribes to be served. Applications by Tribal organizations will not require a specific Tribal resolution if the current Tribal resolution(s) under which they operate would encompass the proposed grant activities. Draft resolutions are acceptable in lieu of an official resolution. However, an official signed Tribal resolution must be faxed to the Division of Grants Operations (DGO) at (301) 443–9602 to the attention of Kimberly Pendleton prior to the beginning of the Application Review. Therefore, if an official signed resolution is not received in DGO by August 3, 2009 the application will be considered incomplete, ineligible for review, and returned to the applicant without consideration.

2. Cost Sharing or Matching

The Methamphetamine & Suicide Prevention Initiative for Youth does not require matching funds or cost sharing.

3. Other Requirements

A. If application budgets exceed the stated dollar amount that is outlined within this announcement those applications will not be considered for funding.

B. The budget should include a budget narrative and justification for all cost outlined in the application for the budget period and should explain why each line item is necessary or relevant to the proposed project.

IV. Application and Submission Information

1. Applicant package may be found at the Grants.gov Web site (*http://www.grants.gov*), or for a link to the package information go to the Grants Policy Staff Web site at *http://www.ihs.gov/NonMedicalPrograms/gogp/gogp_funding.asp.* Information regarding the electronic application process may be directed to Tammy G. Bagley at (301) 443–6290.

The entire application package and detailed application instructions are available at: *http://www.grants.gov/index.jsp*.

2. Content and Form of Application Submission

a. You must submit a project narrative with your application package. The project narrative must be submitted in the following format:

- *Maximum number of pages:* 25. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- *Font size:* 12 point unreduced.
- Single spaced.
- 8½″ x 11″ paper.
- *Page margin size:* One inch.

Your narrative should address activities to be conducted over the entire project period. You must use the sections/headings listed below in developing your project narrative. Be sure to place the required information in the correct section, or it will not be considered. Your application will be scored according to how well you address the requirements for each section of the project narrative. Your project narrative must include the following items in the order listed:

- Statement of Need.
- Describe the target population as well as the geographic area to be served, and justify the selection of both. The target population should include AI/AN youth who are currently residing within a youth regional/residential treatment center or who have been discharged from a residential treatment center within the previous sixty (60) days. Include the numbers to be served and demographic information. Discuss the target population's language, beliefs, norms and values, as well as socioeconomic factors that must be considered in services to this population. Describe a brief history of the youth recidivism issues in the community and responses locally, within the Tribe and in the State.
- Document clearly whether this project will address the transitional/discharge or aftercare problem or decrease the rate of youth recidivism within the YRTC.
- Document the need for a transitional/discharge or aftercare project in the selected community which is experiencing increases in the rate of recidivism. This documentation of need may come from a variety of sources, and applicants are encouraged to provide as much quantifiable data related information about the increases as may be available.
- Show that identified needs are consistent with priorities of the Tribes, State, or county that has primary responsibility for the service delivery system.
- Describe the local resource organizations in the community.
- Depending on the type of project chosen, describe the local transitional/discharge or aftercare resources available to the project.

Project Plan

- Clearly state the purpose, goals and objectives of your proposed project and how it addresses the target population and the geographic area being served.
- Describe how the project is to be implemented, including the roles of staff to be hired.
- Provide a realistic timeline for the project (chart or graph) showing key activities, milestones, and responsible staff. [*Note:* The timeline should be part of the project narrative. It should not be placed in an appendix.]
- If you plan to include an advisory body in your project, describe its membership, roles and functions, and frequency of meetings.
- Describe how members of the target population help prepare the application and how they will help plan, implement, and evaluate the project.
- Identify any other organizations that will participate in the proposed project. Describe their roles and responsibilities and demonstrate their commitment to the project. Include letters of commitment from community organizations supporting the project in the appendix.
- Show that the necessary groundwork (*e.g.,* planning, consensus development, development of memoranda of agreement) has been completed or is near completion so that the project can be implemented, and any prevention or treatment interventions can begin as soon as possible but no later than six (6) months after grant award.
- Describe any potential barriers to successful conduct of the proposed project and how you will overcome them.
- Describe your plan to ensure project sustainability when funding for this project ends. Also describe how program continuity will be maintained when there is a change in the operational environment (*e.g.,* staff turnover, change in project leadership) to ensure stability over time.

Organizational Capacity

- Discuss the capability and experience of the applicant organization and other participating organizations with the target population. Provide Memoranda of Understanding or Letters of Agreement specifically for the proposed project from participating organizations in the appendix.
- Describe existing community infrastructure that addresses transitional/discharge or aftercare treatment.
- Provide a list of staff and position descriptions for those who will participate in the project, showing the role of each and their level of effort and qualifications. Include the project director and other key personnel, such as the local evaluator and prevention or treatment personnel.
- Describe the cultural characteristics of key staff and indicate if any are members of the target population/community.
- Describe the resources available for the proposed project (*e.g.,* facilities, equipment), and provide evidence that services will be provided in a location that is adequate, accessible, compliant with the Americans with Disabilities Act (ADA), and amenable to the target population.
- Describe evidence of successful program management experience (*see* Criteria for more detail).
- Describe experience with other Federal, State, or private grants.
- Describe data collection experience and capacity for data storage. Clearly describe the project's information management system capabilities and history of its use (if any). Describe any plans to utilize the RPMS information

management system with the implementation of this project. If applicant currently utilizes an alternate information management system or is unable to utilize RPMS as an information management system, the applicant should demonstrate within the application how they plan to satisfy the data collection requirements.

Local Evaluation Capacity

- Grantees must evaluate their projects and are required to describe their evaluation plans in their applications. The evaluation should be designed to provide regular feedback to the project to improve services. The evaluation must include both process and outcome components. Process and outcome evaluations must measure change relating to project goals and objectives over time compared to baseline information. Describe evaluation experience with current or past community projects.
- State willingness to work with IHS evaluation consultant(s) in developing community-specific outcome measures for the local and national evaluation.
- Demonstrate evidence of having secured or plans to secure a qualified local evaluation consultant and/or part-time employee to conduct data collection and data entry (*e.g.,* resume, position description).
- Describe plans for data collection, management, analysis, interpretation and reporting. Describe the existing approach to the collection of data, along with any necessary modifications. Be sure to include data collection instruments/interview protocols in an appendix format.
- Demonstrate how the evaluation will be integrated with requirements for collection and reporting of performance data (*e.g.,* RPMS and GPRA indicators, performance measures). *Explain:* How you will ensure privacy and confidentiality; describe where data will be stored? Who will or will not have access to information and how the identity of participants will be kept private, for example, through the use of a coding system on data records, limiting access to records, or storing identifiers separately from data? Describe adequate consent procedures.
- Applicants must consider their evaluation plans when preparing the project budget. No more than 20% of the total grant award may be used for evaluation and data collection (this is not a research grant).

The evaluation must include both process and outcome components. Process and outcome evaluations must measure change relating to project goals and objectives over time compared to baseline information.

Process components should address issues such as:

- How closely did the implementation match the plan?
- What types of deviation from the plan occurred?
- What led to the deviations?
- What effect did the deviations have on the planned intervention and evaluation?
- Who (program, staff) provided what services (modality, type, intensity, duration), to whom (individual characteristics), in what context (system, community), and at what cost (facilities, personnel, dollars)?

Outcome components should address issues such as:

- What was the effect of the intervention on participants? (For intervention projects only.)
- What was the effect of infrastructure development on service capacity and other system outcomes? (For infrastructure projects only.)
- What program/contextual factors were associated with outcomes?
- What individual factors were associated with outcomes?
- How durable were the effects?

- Budget Justification (will not be counted in the stated page limit).
- You must provide a narrative justification of the items included in your proposed budget, as well as a description of existing resources and other support you expect to receive for the proposed project. Be sure to show that no more than 20% of the total grant award will be used for data collection and evaluation.

Additional information shall be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Position descriptions for key personnel including local evaluator and data collection/data entry employees. If the person evaluator will be subcontracted, include a letter of commitment with a current biographical sketch from the individual(s). Job descriptions should be no longer than one page each.
- Curriculum Vitae/Resume of key personnel (project director, evaluator (if identified). Resumes should be no longer than two (2) pages in length.
- Documentation of current indirect cost rate agreement.

3. Submission Dates and Times

Applications must be submitted electronically through Grants.gov by 12 midnight Eastern Daylight Time (E.D.T.) on the application deadline due date. If technical challenges arise and the applicant is unable to successfully complete the electronic application process, the applicant should contact Grants Policy Staff at (301) 443–6290 at least fifteen days prior to the application deadline and advise of the difficulties that your organization is experiencing. The grantee must obtain prior approval, in writing (e-mails are acceptable) allowing the paper submission. If submission of a paper application is requested and approved, the original and two copies may be sent to Division of Grants Operations (DGO), 801 Thompson Avenue, TMP, Suite 360, Rockville, MD 20852, (301) 443–5204 by 12 midnight E.D.T. on the application deadline date. Applications not submitted through Grants.gov, without an approved waiver, may be returned to the applicant without review or consideration. Late applications will not be accepted for processing. They will be returned to the applicant and will not be considered for funding.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are allowable pending prior approval from the awarding agency. However, in accordance with 45 CFR Part 74 all pre-award costs are incurred at the recipient's risk. The awarding office is under no obligation to reimburse such costs if for any reason the applicant does not receive an award or if the award to the recipient is less than anticipated.
- The available funds are inclusive of direct and appropriate indirect costs.
- IHS will not acknowledge receipt of applications.

6. Other Submission Requirements

Electronic Submission—The preferred method for receipt of applications is electronic submission through Grants.gov. However, should any technical challenges arise regarding the submission, please contact Grants.gov Customer Support at (800) 518–4726 or *support@grants.gov.* The Contact Center hours of operation are Monday–Friday from 7 a.m. to 9 p.m. E.D.T. The applicant must seek assistance at least fifteen days prior to the application deadline. Applicants that do not adhere to the timelines for Central Contractor Registry (CCR) and/or Grants.gov registration and/or requesting timely assistance with technical issues will not be a candidate for paper applications.

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■ Under the new IHS application submission requirements, paper applications are not the preferred method. However, if you have technical problems submitting your application online, please contact Grants.gov Customer Support at: *http://www.grants.gov/CustomerSupport.*

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■ If it is determined that a formal waiver is necessary, the applicant must submit a request, in writing (e-mails are acceptable), to *Michelle.Bulls@ihs.gov* including a justification for the need to deviate from the standard electronic submission process. Upon receipt of approval, a hard copy application package must be downloaded by the applicant from Grants.gov, and sent directly to the DGO, 801 Thompson Avenue, TMP, Suite 360, Rockville, MD 20852 on or before 12 midnight of the application deadline date.

■ Upon entering the Grants.gov site, there is information available that outlines the requirements to the applicant regarding electronic submission of an application through Grants.gov, as well as the hours of operation. We strongly encourage all applicants not to wait until the deadline date to begin the application process through Grants.gov as the registration process for CCR and Grants.gov could take up to fifteen working days.

■ To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the CCR. You should allow a minimum of ten days working days to complete CCR registration. See below for more information on how to apply.

■ You must submit all documents electronically, including all information typically included on the SF–424 and all necessary assurances and certifications.

■ Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by IHS.

■ Your application must comply with any page limitation requirements described in the program announcement.

■ After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGO will download your application from Grants.gov and provide necessary copies to the cognizant program office. The DGO will not notify applicants that the application has been received.

■ You may access the electronic application for this program on *http://www.Grants.gov.*

■ You may search for the downloadable application package using either the CFDA number or the Funding Opportunity Number. Both numbers are identified in the heading of this announcement.

■ The applicant must provide the Funding Opportunity Number: HHS–2009–IHS–METHY–0001.

E-mail applications will not be accepted under this announcement.

DUNS Number

Applicants are required to have a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://fedgov.dnb.com/webform/displayHomePage.do* or call (866) 705–5711. Interested parties may wish to obtain their DUNS number by phone to expedite the process.

Applications submitted electronically must also be registered with the CCR. A DUNS number is required before CCR registration can be completed. Many organizations may already have a DUNS number. Please use the number listed above to investigate whether or not your organization has a DUNS number. Registration with the CCR is free of charge.

Applicants may register by calling (888) 227–2423. Please review and complete the CCR Registration Worksheet located on *http://www.grants.gov/CCRRegister.*

More detailed information regarding these registration processes can be found at *http://www.grants.gov.*

V. Application Review Information

1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective, qualitative and quantitative, and must measure the intended process and outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

Project Plan (40 Points)

- How adequate is the description of the project to be implemented? (*e.g.* are the roles of the partners and staff to be hired included)—10 points.
- How comprehensive are proposed objectives and activities described? (*e.g.* are responsible partners or staff identified for all activities; will activities support the successful completion of the project; are the proposed methods feasible)—15 Points.
- Is there a good description and justification for the identified project target population(s)?—5 Points.
- Is the time line provided comprehensive? (*i.e.,* does it identify proposed project activities and responsible staff, does the plan cover the entire project period)—5 Points.
- How comprehensive is the plan in describing and identifying potential problem areas or barriers and proposing solutions? (*e.g.* lack of understanding of the severity of the problem within the community, lack of community resources or lack of coordination of community resources)—5 Points.

Statement of Need (25 Points)

- Does the description provide an adequate baseline picture of the community? (*e.g.,* demographics, location and brief history of local, County and State transitional/discharge or aftercare services)—15 Points.
- How comprehensive is the description of the local resource organizations relevant to the proposed plan? (*e.g.,* behavioral health, health, educational, legal, law enforcement, non-profit, business)—5 Points.
- How comprehensive is the description of community transitional/discharge or aftercare resources? (*e.g.,* number of current facilities and programs; existing community resources)—5 Points.

Organizational Capacity (20 Points)

- Is there an adequate description of the infrastructure addressing transitional/discharge or aftercare services?—5 Points.

• Is there adequate evidence provided of successful transitional/discharge or aftercare program management capability?—2 Points.

• How comprehensive is the description of experience with other Federal, State or private grants?—2 Points.

• How adequate is the description of the project staffing, their tasks/roles, required experience and training, and time commitment? (*i.e.,* are the staff roles clearly defined; do key staff have sufficient experience and training; is the time commitment for all staff sufficient to accomplish the program goals)—6 Points.

• Are position descriptions for key personnel provided? Key personnel include the local evaluation consultant, local project director/coordinator (if noted), clinical staff and data collection/data entry employee.—3 Points.

• Is the data collection and storage capacity adequately described—2 Points.

Local Evaluation Capacity (15 Points)

• How well do the process and outcome measures describe accomplishment of stated activities and objectives (*e.g.,* are they measurable objectives, is there a reasonable time frame for proposed project)?—5 Points.

• Is there well-described evidence of experience of evaluation capacity with other Federal, State or private grants?—3 Points.

• Is there stated willingness to collaborate with external IHS evaluation consultants?—4 Points.

• Is evidence of commitment to securing a qualified local evaluator and data collection/entry employee well documented (*e.g.* letter of commitment/contract, position descriptions, resumes)?—3 Points.

2. Review and Selection Process

Each application will be prescreened by the DGO staff for eligibility, compliance with the announcement, and completeness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not be referred to the Objective Review Committee. Applicants will be notified that their application did not meet submission requirements.

Applications that meet eligibility requirements, are complete, and conform to this announcement will be subject to the competitive objective review and evaluation by an Ad Hoc Review Committee of Tribal, IHS, and other Federal or non-Federal reviewers. Applications will be reviewed against criteria. Reviewers will assign a numerical score to each application which will be used to rank applications.

The review process will be directed by the DGO staff to ensure compliance with HHS and IHS grant review guidelines.

In addition, the following factors may affect the funding decision:

• Geographic diversity.

3. Anticipated Announcement and Award Dates

Awards will start on August 14, 2009.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) will be initiated by DGO and will be mailed via postal mail to each entity that is approved for funding under this announcement. The NoA will be signed by the Grants Management Officer and this is the authorizing document for which funds are dispersed to the approved entities. The NoA will serve as the official notification of the grant award and will reflect the amount of Federal funds awarded the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. The NoA is the legally binding document. Applicants who are approved but unfunded or disapproved based on their Objective Review score will receive a copy of the Executive Summary which identifies the weaknesses and strengths of the application submitted.

2. Administrative and National Policy Requirements

Grants are administrated in accordance with the following documents:

• This Program Announcement.

• 45 CFR Part 92, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments,'' or 45 CFR Part 74, ''Uniform Administrative Requirements for Awards to Institutions of Higher Education, Hospitals, Other Non Profit Organizations and Commercial Organizations.''

• HHS Grants Policy Statement, January 2007.

• OMB Circular A–87, ''State, Local, and Indian Tribal Governments, (Title 2 Part 225) or OMB Circular A–122, ''Non-profit Organizations.'' (Title 2 Part 230), or OMB Circular A–133, ''Audits of States, Local Governments, and Non Profit Organizations.''

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to have a current indirect cost rate agreement in place prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the agency or office. A current rate means the rate covering the applicable activities and the award budget period. If the current rate is not on file with the DGO at the time of award, the indirect cost portion of the budget will be restricted and not available to the recipient until the current rate is provided to DGO.

Generally, indirect costs rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) *http://rates.psc.gov/* and the Department of the Interior (National Business Center) *http://www.nbc.gov/acquisition/ics/icshome.html*. If your organization has questions regarding the indirect cost policy, please contact the DGO at 301–443–5204.

4. Reporting

A. *Progress Report.* A semi-annual progress report is required. A format will be provided. These reports will include a brief comparison of actual accomplishments to the goals established for the period, or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. Copies of any materials developed shall be attached. Semi-annual progress reports must be submitted within 30 days of the end of the half year. An annual report must be submitted within 30 days after the end of the 12 month time period.

B. *Financial Status Report.* Semi-annual financial status reports must be submitted within 30 days of the end of the half year. Final financial status reports are due within 90 days of expiration of the budget/project period. Standard Form 269 (long form) will be used for financial reporting.

C. *Reports.* Grantees are responsible and accountable for accurate reporting of the Progress Reports and Financial Status Reports which are generally due semi-annually. Financial Status Reports (SF–269) are due 90 days after each budget period and the final SF–269 must be verified from the grantee records on how the value was derived. Grantees must submit reports in a reasonable period of time.

Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of

payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

5. Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

VII. Agency Contact(s)

We encourage inquiries concerning this announcement.

For program technical assistance, contact: Bryan E. Wooden, Director (Acting) Division of Behavioral Health, 801 Thompson Avenue, Suite 300, Reyes Building, Rockville, Maryland 20852. *Telephone:* (301) 443–2038. *E-mail:* bryan.wooden@ihs.gov.

For financial, grants management, or budget assistance, contact: Kimberly Pendleton, 12300 Twinbrook Metro Plaza, Suite 360, Rockville, MD 20851. *Telephone:* (301) 443–6290. *E-mail:* kimberly.pendleton@ihs.gov.

VIII. Other Information

This and other IHS funding opportunity announcements can be found on the IHS Web site, Internet address: *http://www.ihs.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

Dated: June 26, 2009.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. E9–16148 Filed 7–7–09; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

[Funding Opportunity Number: HHS–2009–IHS–OCPS–HIV–0001]

Office of Clinical and Preventive Services: National HIV Program; Announcement Type: Cooperative Agreement; Catalog of Federal Domestic Assistance Number: 93.933

DATES: Key Dates: Application Deadline Date: July 31, 2009.

Review Date: August 6, 2009.

Anticipated Start Date: August 10, 2009.

I. Funding Opportunity Description

The Indian Health Service (IHS) announces that competitive cooperative agreement applications are now being accepted by the IHS Office of Clinical and Preventive Services (OCPS) for the National Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS) Program. This program is authorized under the Snyder Act, 25 U.S.C. 13, and the Indian Health Care Improvement Act, 25 U.S.C. 1602(a)(b)(42)(43). This program is described under 93.933 in the Catalog of Federal Domestic Assistance (CFDA). There will be only one funding cycle during Fiscal Year (FY) 2009.

Enhancement of HIV/AIDS testing activities in American Indian/Alaska Native (AI/AN) people is necessary to reduce the incidence of HIV/AIDS in those communities by increasing access to HIV related services, reducing stigma, and making testing routine. This open competition seeks to expand fiscal resources to increase the number of AI/AN with awareness of his/her HIV status. The cooperative agreements will provide routine HIV screening for adults as per 2006 Centers for Disease Control and Prevention (CDC) guidelines, and pre- and post test counseling (when appropriate).

These cooperative agreements will be used to identify best practices to enhance HIV testing, including rapid testing and/or conventional HIV antibody testing, and to provide a more focused effort to address HIV/AIDS prevention in AI/AN populations in the United States.

The nature of these projects will require collaboration to: (1) Coordinate activities with the IHS National HIV Program; and (2) submit and share non-personally identifiable (NPI) data surrounding HIV/AIDS testing, treatment and education.

These agreements are intended to encourage development of sustainable, routine HIV screening programs in Tribal health facilities that are aligned with 2006 CDC HIV screening guidelines (*http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm*). Key features include streamlined consent and counseling procedures (verbal consent, opt-out), a clear HIV screening policy, identifying and implementing any necessary staff training, community awareness, and a clear follow-up protocol for HIV positive results including linkages to care. Grantees may choose to bundle HIV tests with sexually transmitted diseases (STD) screening.

Proposed activities that cover large populations and/or geographical areas that do not necessarily correspond with current IHS administrative areas are encouraged. In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under: 1. *Recipient Activities*, and IHS will be responsible for conducting activities under 2. *IHS Activities*.

1. Recipient Activities

- Assist AI/AN communities and Tribal organizations in increasing the number of AI/ANs with awareness of his/her HIV status. The grantee will assist and facilitate reporting of HIV diagnoses to local and state public health authorities in the region as required under existing public health statutes.
- Test at least one previously-untested (not tested in the prior five years) patient for every $50.00 in cooperative agreement funds received, inclusive of all ancillary and indirect costs.
- Collaborate with national IHS programs by providing standardized, anonymous HIV surveillance data on a quarterly basis, and in identifying and documenting best practices for implementing routine HIV testing.
- Participate in the development of systems for sharing, improving, and disseminating aggregate HIV data at a national level for purposes of advocacy for AI/AN communities, Government Performance Results Act of 1993 (GPRA), Healthy People 2010/2020 and other national-level activities.
- A three page mid-year report and no more than a ten page summary annual report at the end of each project year. The report should establish the impact and outcomes of various methods of implementing routine screening tried during the funding period.

2. IHS Activities

- Provide funded organizations with ongoing consultation and technical assistance to plan, implement, and evaluate each component of the comprehensive program as described under *Recipient Activities* above. Consultation and technical assistance will include, but not be limited to, the following areas: (a) Interpretation of current scientific literature related epidemiology, statistics, surveillance, Healthy People 2010/2020 Objectives, and other HIV disease control activities;

(b) Design and implementation of program components (including, but not limited to, program implementation methods, surveillance, epidemiologic analysis, outbreak investigation, development of programmatic evaluation, development of disease control programs, and coordination of activities); and

(c) Overall operational planning and program management.

• Conduct visits to assess program progress and mutually resolve problems, as needed.

• Coordinate these activities with all IHS HIV activities on a national basis.

II. Award Information

Type of Award: Cooperative Agreement.

Estimated Funds Available: The total amount identified for Fiscal Year (FY) 2009 is ten awards totaling $850,000. The award is for two years in duration. The individual award received is inclusive of project evaluation and administrative support. Awards under this announcement are subject to the availability of funds.

Anticipated Number of Awards: An estimated number of ten cooperative agreements (CA) awards will be issued under the Program.

Project Period: 2 years.

Award Amount: $85,000.

Projects will be funded for annual budget periods with project periods of two years, dependent upon the scope of work. There will be yearly continuation applications required. The continuation years will be pending funding and based on the following:

• Satisfactory progress.

• Availability of funds.

• Continuing need for IHS to support the program (program priorities).

Awardees will be required to submit routine quarterly surveillance data as well as the Standard Form 424 and Progress Reports, annually and financial statements as required in the PHS Grants Policy Statement. Forms are available at the following Web site *http://www.grants.gov*. The progress report should provide information about changes in the program and a summary report of any evaluations. These bi-annual and annual progress reports will be closely monitored by the IHS staff to ensure that the cooperative agreement is achieving the goals of the Office of HIV/AIDS Policy (OHAP). Limitations—Only one CA project will be awarded per Tribe, Tribal organization, or intertribal consortium.

III. Eligibility Information

1. Federally recognized AI/AN Tribes, as defined under 25 U.S.C. 1603(d), Tribal Organizations, as defined under 25 U.S.C. 1603(e), or a consortium of two or more of those Tribes or Tribal organizations. Applicants other than Tribes must provide proof of non-profit status. Eligible consortiums must represent or propose to serve a population of at least 20,000 AI/AN in order to be considered eligible. An intertribal consortium or AI/AN organization is eligible to receive a cooperative agreement if it is incorporated for the primary purpose of improving AI/AN health, and it is representing of the tribes or AN villages in which it is located. Collaborations with regional IHS, CDC, State, or organizations are encouraged and proof of such collaboration must be included in the application. The following documentation is required:

• Tribal Resolution

○ A signed and dated resolution supportive of the HIV cooperative agreement proposal from the Indian Tribe(s) served by the project, or a copy of an existing Tribal resolution that encompasses the proposed activities and project type, must accompany the application.

○ Application by Tribal organizations will not require a specific Tribal resolution(s) if the current blanket Tribal resolution(s) under which they operate would encompass the proposed activities and project type.

• Non-profit organization—a copy of 501(c)(3) non-profit certificate.

2. Cost Sharing or Matching—This program does not require matching funds or cost sharing.

If the application budget exceeds $85,000, it will not be considered for review.

IV. Application and Submission Information

1. Applicant package may be found in Grants.gov (*http://www.grants.gov*) or at: *http://www.ihs.gov/NonMedicalPrograms/gogp/gogp_funding.asp.* Questions regarding the electronic application process may be directed to Michelle G. Bulls at (301) 443–6290.

2. Content and Form of Application Submission:

• Be single spaced.

• Be typewritten.

• Have consecutively numbered pages.

• Use black type not smaller than 12 characters per one inch.

• Contain a narrative that does not exceed 15 typed pages that includes the other submission requirements below. The 15 page narrative does not include the work plan, standard forms, table of contents, budget, budget justifications, narratives, and/or other appendix items.

Public Policy Requirements: All Federal-wide public policies apply to IHS grants with the exception of the Lobbying and Discrimination public policy.

3. Submission Dates and Times:

The application from each Tribal entity must be submitted electronically through *Grants.gov* by 12 midnight Eastern Daylight Time (EDT).

If technical challenges arise and the Tribes or Tribal entities are unable to successfully complete the electronic application process, each organization must contact Michelle G. Bulls, Grants Policy Staff (GPS) fifteen days prior to the application deadline and advise of the difficulties that they are experiencing. Each organization must obtain prior approval, in writing (e-mails are acceptable), from Ms. Bulls allowing the paper submission. If submission of a paper application is requested and approved, the original and two copies may be sent to the appropriate grants contact that is listed in Section IV.1 above. Applications not submitted through *Grants.gov*, without an approved waiver, may be returned to the organizations without review or consideration.

A late application will be returned to the organization without review or consideration.

4. Intergovernmental Review: Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions:

A. Pre-award costs are allowable pending prior approval from the awarding agency. However, in accordance with 45 CFR Part 74, all pre-award costs are incurred at the recipient's risk. The awarding office is under no obligation to reimburse such costs if for any reason any of the urban Indian organizations do not receive an award, or if the award to the recipient is less than anticipated.

B. The available funds are inclusive of direct and appropriate indirect costs.

C. Only one cooperative agreement will be awarded to each organization.

D. IHS will acknowledge receipt of the application by e-mail.

6. Other Submission Requirements:

Electronic Submission—Each Tribe or Tribal entity must submit through *Grants.gov*. However, should any technical challenges arise regarding the submission, please contact *Grants.gov* Customer Support at (800) 518–4726 or *support@grants.gov*. The Contact Center hours of operation are Monday-Friday from 7 a.m. to 9 p.m. E.D.T. If you require additional assistance please call (301) 443–6290 and identify the need for assistance regarding your *Grants.gov* application. Your call will be transferred to the appropriate grants staff member. Each organization must seek assistance at least fifteen days prior to the application deadline. If each organization doesn't adhere to the timelines for Central Contractor Registry (CCR), *Grants.gov* registration and request timely assistance with technical

issues, paper application submission may not be granted.

To submit an application electronically, please use the *Grants.gov* Web site. Download a copy of the application package on the *Grants.gov* Web site, complete it offline and then upload and submit the application via the *Grants.gov* site. You may not e-mail an electronic copy of a grant application to IHS.

Please be reminded of the following:

- Under the new IHS application submission requirements, paper applications are not the preferred method. However, if any Tribe or Tribal entity has technical problems submitting the application on-line, please contact directly *Grants.gov* Customer Support at: *http://www.grants.gov/CustomerSupport.*
- Upon contacting *Grants.gov*, obtain a *Grants.gov* tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver request from Grants Policy must be obtained. If any of the organizations are still unable to successfully submit the application online, please contact Michelle G. Bulls, GPS at (301) 443–6290 at least fifteen days prior to the application deadline to advise her of the difficulties you have experienced.
- If it is determined that a formal waiver is necessary, each organization must submit a request, in writing (e-mails are acceptable), to *Michelle.Bulls@ihs.gov* providing a justification for the need to deviate from the standard electronic submission process. Upon receipt of approval, a hard-copy application package must be downloaded from *Grants.gov*, and sent directly to the Division of Grants Operations (DGO), 801 Thompson Avenue, TMP, Suite 360, Rockville, MD 20852 by July 31, 2009.
- Upon entering the *Grants.gov* Web site, there is information available that outlines the requirements to all eligible entities regarding electronic submission of application and hours of operation. We strongly encourage that each organization does not wait until the deadline date to begin the application process as the registration process for CCR and *Grants.gov* could take up to fifteen working days.
- To use *Grants.gov*, each eligible entity must have a Data Universal Numbering System (DUNS) Number and register in the CCR. Each organization should allow a minimum of ten working days to complete CCR registration. See below on how to apply.
- Each organization must submit all documents electronically, including all information typically included on the SF–424 and all necessary assurances and certifications.
- Please use the optional attachment feature in *Grants.gov* to attach additional documentation that may be requested by IHS.
- Each organization must comply with any page limitation requirements described in the program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The DGO will retrieve your application from *Grants.gov*. The DGO will notify each organization that the application has been received.
- You may access the electronic application for this program on *Grants.gov*.
- You may search for the downloadable application package using either the CFDA number or the Funding Opportunity Number. Both numbers are identified in the heading of this announcement.
- To receive an application package, each urban Indian organization must provide the Funding Opportunity Number: HHS–2009–IHS–OCPS–HIV–0001.

E-mail applications will not be accepted under this announcement.

DUNS Number

Applicants are required to have a DUNS number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call (866) 705–5711. Interested parties may wish to obtain their DUNS number by phone to expedite the process.

Applications submitted electronically must also be registered with the CCR. A DUNS number is required before CCR registration can be completed. Many organizations may already have a DUNS number. Please use the number listed above to investigate whether or not your organization has a DUNS number. Registration with the CCR is free of charge.

Applicants may register by calling (888) 227–2423. Please review and complete the CCR Registration Worksheet located on *http://www.ccr.gov.*

More detailed information regarding these registration processes can be found at *Grants.gov.*

V. Application Review Information

1. Criteria

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The narrative should include all prior years of activity; information for multi-year projects should be included as an appendix (see E. ''Categorical Budget and Budget Justification'') at the end of this section for more information. The narrative should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the entity. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Emphasis will be placed on measures to increase testing and ensure sustainability of testing.

A. Understanding of the Need and Necessary Capacity (15 Points)

1. Understanding of the Problem

a. Define the project target population, identify their unique characteristics, and describe the impact of HIV on the population.

b. Describe the gaps/barriers in HIV testing for the population.

c. Describe the unique cultural or sociological barriers of the target population to adequate access for the described services.

2. Facility Capability

a. Briefly describe your health facility and user population.

b. Describe your health facility's ability to conduct this initiative through:

- Linkages to treatment and care: Partnerships established to refer out of your health facility as needed for specialized treatment, care, confirmatory testing (if applicable) and counseling services.

B. Work Plan (40 Points)

- Implementation Plan

1. Identify the proposed program activities and explain how these activities will increase and sustain HIV screening.

2. Describe Policy and Procedure changes anticipated for testing implementation that include:

a. Support of CDC 2006 Revised Testing Recommendations.

b. Community awareness of new HIV testing policy.

c. Age and sex range of persons to be tested.

d. Bundling of HIV test with STDs tests.

e. Type of HIV test (rapid, conventional, Western Blot) and who will perform test (in-house, contract lab).

f. Inclusion, exclusion, or phased introduction of testing in outpatient, inpatient, acute care/emergency room, specialty clinics, community-based testing.

3. Provide a clear timeline with quarterly milestones for project implementation.

4. Describe which group(s), if any, to which you cannot, because of State regulations, offer testing with verbal consent only, in an opt-out format.

5. Describe how the program will ensure that clients receive their test results, particularly clients who test positive.

6. Describe how the program will ensure that individuals with initial HIV-positive test results will receive confirmatory tests. If you do not provide confirmatory HIV testing, you must provide a letter of intent or Memorandum of Understanding with an external laboratory documenting the process through which initial HIV-positive test results will be confirmed.

7. Describe the program strategies to linking potential seropositive patients to care.

8. Describe the program procedures for reporting seropositive patients to the appropriate State(s).

9. Describe the program quality assurance strategies.

10. Describe how the program will train, support and retain staff providing counseling and testing.

11. Describe how the program will ensure client confidentiality.

12. Describe how the program will ensure that your services are culturally sensitive and relevant.

13. Describe how the program will attempt to streamline procedures so as to reduce the overall cost per test administered.

C. Project Evaluation (20 Points)

1. Evaluation Plan

The grantee shall provide a plan for monitoring and evaluating implementation of the HIV rapid test and/or standard HIV antibody test, and to identify best practices.

2. Reporting Requirements

The following quantitative and qualitative measures shall be addressed:

• Required Quantitative Indicators (quantitative). Quarterly surveillance reports should be broken down by age and sex and contain only aggregate data, with no personal identifiers:

1. Number of tests performed and number of test refusals.

2. Number of clients learning of their serostatus for the first time via this testing initiative (unique patients, non-repeated tests). Number of clients tested for the first time in five years and meeting the programmatic definition of ''previously untested.''

3. Number of reactive tests and confirmed seropositive (actual and proportion).

4. Number of clients linked to care/treatment or referrals for prevention counseling.

5. Number of individuals receiving their confirmatory test results.

• Required Qualitative Information

1. Measures in place to protect confidentiality.

2. Identify barriers to implementation as well as lessons learned for best practices to share with other Tribes or Tribal organizations.

3. Sustainability plan and measures of ongoing testing in future years, after grant money has been spent.

• Other quantitative indicators may be collected to improve clinic processes and add to information reported, however are not required reporting measures:

1. Number of clients who refused due to prior knowledge of status.

2. Number of rapid versus standard antibody test.

3. Number of false negatives and/or positives after confirmatory test.

D. Organizational Capabilities and Qualifications (10 Points)

This section outlines the broader capacity of the organization to complete the project outlined in the work plan. It includes the identification of personnel responsible for completing tasks and the chain of responsibility for successful completion of the project outlined in the work plan.

1. Describe the organizational structure.

2. Describe the ability of the organization to manage the proposed project. Include information regarding similarly sized projects in scope and financial assistance as well as other grants and projects successfully completed.

3. Describe what equipment (*i.e.,* phone, Web sites, etc.) and facility space (*i.e.,* office space) will be available for use during the proposed project. Include information about any equipment not currently available that will be purchased throughout the agreement.

4. List key personnel who will work on the project.

• Identify staffing plan, existing personnel and new program staff to be hired.

• In the appendix, include position descriptions and resumes for all key personnel. Position descriptions should clearly describe each position and duties indicating desired qualifications, experience, and requirements related to the proposed project and how they will be supervised. Resumes must indicate that the proposed staff member is qualified to carry out the proposed project activities and who will determine if the work of a contractor is acceptable.

• Note who will be writing the progress reports.

• If a position is to be filled, indicate that information on the proposed position description.

• If the project requires additional personnel beyond those covered by the supplemental grant, (*i.e.,* IT support, volunteers, interviewers, etc.), note these and address how these positions will be filled and, if funds are required, the source of these funds.

• If personnel are to be only partially funded by this supplemental grant, indicate the percentage of time to be allocated to this project and identify the resources used to fund the remainder of the individual's salary.

E. Categorical Budget and Budget Justification (15 Points)

Provide a clear estimate of the project program costs and justification for expenses for the entire grant period. The budget and budget justification should be consistent with the tasks identified in the work plan. The budget focus should be on routinizing and sustaining HIV testing services as well as reducing the cost per person tested.

1. Categorical budget (Form SF 424A, Budget Information Non-Construction Programs) completing each of the budget periods requested.

2. Narrative justification for all costs, explaining why each line item is necessary or relevant to the proposed project. Include sufficient details to facilitate the determination of allowable costs.

3. Budget justification should include a brief program narrative for the second year.

4. If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the rate agreement in the appendix.

2. Review and Selection Process

In addition to the above criteria/requirements, the application will be considered according to the following:

A. The submission deadline: July 31, 2009.

Applications submitted in advance of or by the deadline and verified by the

postmark will undergo a preliminary review to determine that:

• The applicant is eligible in accordance with this grant announcement.

• The application is not a duplication of a previously funded project.

• The application narrative, forms, and materials submitted meet the requirements of the announcement allowing the review panel to undertake an in-depth evaluation; otherwise, it may be returned.

B. The Objective Review date is August 6, 2009.

The applications that are complete, responsive, and conform to this program announcement will be reviewed for merit by the Ad Hoc Objective Review Committee (ORC) appointed by the IHS to review and make recommendations on this application. Prior to ORC review, the application will be screened to determine that programs proposed are those which the IHS has the authority to provide, either directly or through funding agreement, and that those programs are designed for the benefit of IHS beneficiaries. If an eligible entity does not meet these requirements, the application will not be reviewed. The ORC review will be conducted in accordance with the IHS Objective Review Guidelines. The application will be evaluated and rated on the basis of the evaluation criteria listed in section V. 1. The criteria are used to evaluate the quality of a proposed project and determine the likelihood of success.

3. Anticipated Announcement and Award Dates

Anticipated Award Date of August 10, 2009.

VI. Award Administration Information

1. Award Notices.

The Notice of Award (NOA) will be initiated by the DGO and will be mailed via postal mail to the Tribe or Tribal entity. The NOA will be signed by the Grants Management Officer and this is the authorizing document under which funds are dispersed. The NOA is the legally binding document and will serve as the official notification of the grant award and will reflect the amount of Federal funds awarded for the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period.

2. Administrative Requirements.

Grants are administered in accordance with the following documents:

• This Program Announcement.

• 45 CFR Part 74, ''Uniform Administrative Requirements for Awards to Institutions of Higher Education, Hospitals, Other Non Profit Organizations, and Commercial Organizations.''

• Grants Policy Guidance: HHS Grants Policy Statement, January 2007.

• ''Non Profit Organizations'' (Title 2 Part 230).

• Audit Requirements: OMB Circular A–133, ''Audits of States, Local Governments, and Non Profit Organizations.''

• 45 CFR Part 46, ''Protection of Human Subjects.''

3. Indirect Costs.

This section applies to indirect costs in accordance with HHS Grants Policy Statement, Part II–27. The IHS requires applicants to have a current indirect cost rate agreement in place prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognoscente agency or office. A current rate means the rate covering the applicable activities and the award budget period. If the current rate is not on file with the awarding office, the award shall include funds for reimbursement of indirect costs. However, the indirect costs portion will remain restricted until the current rate is provided to the DGO.

4. Reporting.

A. Progress Report. Program progress reports are required quarterly by the National HIV Program in order to satisfy quarterly reports due to the funding source at Minority AIDS Initiative (MAI). These reports (due mid-November, February, May, August) will include quantitative data as well as a brief comparison of actual accomplishments to the goals established for the period per the implementation plan, reasons for delays or milestones not attained (if applicable), and other pertinent information as required. An Assessment and Evaluation Report must be submitted within 30 days of the end of each funded year.

B. Financial Status Report. Semi-annual financial status reports must be submitted within 30 days of the end of the half year. Final financial status reports are due within 90 days of expiration of the budget period. Standard Form 269 (long form) will be used for financial reporting.

C. Participation in a minimum of two teleconferences. Teleconferences will be required semi-annually (unless further follow up is needed) for Technical Assistance to be provided and progress to be shared.

D. Site visits. Tribal sites using MAI resources should be amenable to the possibility of site visits by IHS staff administering MAI funds.

Failure to submit required reports within the time allowed may result in suspension or termination of an active agreement, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the organization or the individual responsible for preparation of the reports.

Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

VII. Agency Contacts

For program-related and general information regarding this announcement: CAPT Scott Giberson, IHS National HIV Principal Consultant, 801 Thompson Ave., Reyes Building, Suite 306, Rockville, MD 20852, (301) 443–2449 or *scott.giberson@ihs.gov.*

For specific grant-related and business management information: Denise Clark, Senior Grants Management Specialist, 801 Thompson Avenue, TMP, Suite 360, Rockville, MD 20852, (301) 443–5204 or *denise.clark@ihs.gov.*

Dated: June 26, 2009.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. E9–16052 Filed 7–7–09; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3305–EM; Docket ID FEMA–2008–0018]

Oklahoma; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Oklahoma (FEMA–3305–EM), dated June 23, 2009, and related determinations.

DATES: *Effective Date:* June 23, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance

Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 23, 2009, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the impact in certain areas of the State of Oklahoma resulting from the record snow and near record snow during the period of March 27–28, 2009, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such an emergency exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures, including snow removal, under the Public Assistance program to save lives and to protect property and public health and safety. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. This emergency assistance will be provided for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for the sub-grantees' regular employees. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs in the designated areas.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Douglas G. Mayne, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared emergency:

The counties of Beaver, Ellis, Woods, and Woodward for emergency protective measures (Category B) under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–16084 Filed 7–7–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1848–DR; Docket ID FEMA–2008–0018]

Kansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–1848–DR), dated June 24, 2009, and related determinations.

DATES: *Effective Date:* June 24, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 24, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Kansas resulting from a severe winter storm and record and near record snow during the period of March 26–29, 2009, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas; assistance for emergency protective measures (Public Assistance Category B), including snow removal for any-continuous 48-hour period during or proximate to the incident period in the designated areas; Hazard Mitigation throughout the State; and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Karl, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Kansas have been designated as adversely affected by this major disaster:

Butler, Chase, Chautauqua, Coffey, Cowley, Dickinson, Elk, Grant, Greenwood, Harvey, Lyon, Marion, Sumner, and Woodson Counties for Public Assistance.

The counties of Barber, Barton, Clark, Comanche, Edwards, Grant, Haskell, Kearny, Kingman, Kiowa, McPherson, Meade, Pratt, Reno, Rice, Seward, Stafford, Stanton, and Stevens for emergency protective measures (Category B) under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

All counties within the State of Kansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–16078 Filed 7–7–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1838–DR; Docket ID FEMA–2008–0018]

West Virginia; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of West Virginia (FEMA–1838–DR), dated May 15, 2009, and related determinations.

DATES: *Effective Date:* June 24, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to the Supplemental Appropriations Act, 2009, Public Law 111–32, FEMA is amending the cost-sharing arrangement concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170b, 5172, and 5173 for the major disaster declared on May 15, 2009, for the State of West Virginia due to the damage resulting from severe storms, flooding, mudslides, and landslides. The West Virginia major disaster declaration is amended as follows:

Federal funds for (Categories C–G) under the Public Assistance program (Section 406) are authorized at 90 percent of total eligible costs and Federal funds for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program (Sections 403 and 407) are authorized at 100 percent of total eligible costs.

This cost share shall apply to disaster assistance provided before, on, or after June 24, 2009.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–16074 Filed 7–7–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1792–DR; Docket ID FEMA–2008–0018]

Louisiana; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–1792–DR), dated September 13, 2008, and related determinations.

DATES: *Effective Date:* June 24, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to the Supplemental Appropriations Act, 2009, Public Law 111–32, FEMA is amending the cost-sharing arrangement concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170b, 5172, and 5173 for the major disaster declared on September 13, 2008, for the State of Louisiana due to the damage resulting from Hurricane Ike. The Louisiana major disaster declaration is amended as follows:

Federal funds for (Categories C–G) under the Public Assistance program (Section 406) are authorized at 90 percent of total eligible costs and Federal funds for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program (Sections 403 and 407) are authorized at 100 percent of total eligible costs.

This cost share shall apply to disaster assistance provided before, on, or after June 24, 2009.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–16076 Filed 7–7–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1791–DR; Docket ID FEMA–2008–0018]

Texas; Amendment No. 16 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–1791–DR), dated September 13, 2008, and related determinations.

DATES: *Effective Date:* June 24, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to the Supplemental Appropriations Act, 2009, Public Law 111–32, FEMA is amending the cost-sharing arrangement concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170b, 5172, and 5173 for the major disaster declared on September 13, 2008, for the State of Texas due to the damage resulting from Hurricane Ike. The Texas major disaster declaration is amended as follows:

Federal funds for (Categories C–G) under the Public Assistance program (Section 406) are authorized at 90 percent of total eligible costs and Federal funds for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program (Sections 403 and 407) are authorized at 100 percent of total eligible costs.

This cost share shall apply to disaster assistance provided before, on, or after June 24, 2009.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–16081 Filed 7–7–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1841–DR; Docket ID FEMA–2008–0018]

Kentucky; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky (FEMA–1841–DR), dated May 29, 2009, and related determinations.

DATES: *Effective Date:* June 24, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to the Supplemental Appropriations Act, 2009, Public Law 111–32, FEMA is amending the cost-sharing arrangement concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170b, 5172, and 5173 for the major disaster declared on May 29, 2009, for the Commonwealth of Kentucky due to the damage resulting from severe storms, tornadoes, flooding, and mudslides. The Kentucky major disaster declaration is amended as follows:

Federal funds for (Categories C–G) under the Public Assistance program (Section 406) are authorized at 90 percent of total eligible costs and Federal funds for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program (Sections 403 and 407) are authorized at 100 percent of total eligible costs.

This cost share shall apply to disaster assistance provided before, on, or after June 24, 2009.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–16082 Filed 7–7–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2009–N128; 20124–1113–0000–F5]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications; request for public comment.

SUMMARY: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under the Endangered Species Act of 1973, as amended (Act). The Act requires that we invite public comment on these permit applications.

DATES: To ensure consideration, written comments must be received on or before August 7, 2009.

ADDRESSES: Written comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 6034, Albuquerque, NM 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Documents will be available for public inspection, by appointment only, during normal business hours at the U.S. Fish and Wildlife Service, 500 Gold Ave., SW., Room 6034, Albuquerque, NM. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Endangered Species Division, P.O. Box 1306, Albuquerque, NM 87103; (505) 248–6920.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit TE–797127

Applicant: U.S. Army Corps of Engineers, Albuquerque, New Mexico. Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys for black-footed ferrets (*Mustela nigripes*) within New Mexico and Colorado.

Permit TE–821356

Applicant: U.S. Geological Survey Grand Canyon Monitoring and Research Center, Flagstaff, Arizona. Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys for humpback chub (*Gila cypha*), bonytail chub (*Gila elegans*), Colorado pikeminnow (*Ptychocheilus lucius*), and razorback sucker (*Xyrauchen texanus*) within the Colorado River in Grand Canyon, Arizona, and Cataract Canyon, Utah.

Permit TE–216075

Applicant: Martin Heaney, Rosenberg, Texas. Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of the following species: Whooping crane (*Grus americana*), golden-checked warbler (*Dendroica chrysoparia*), red-

cockaded woodpecker (*Picoides borealis*), interior least tern (*Sterna antillarum*), Barton Springs salamander (*Eurycea sosorum*), Houston toad (*Bufo houstonensis*), Texas blind salamander (*Typholomolge rathbuni*), fountain darter (*Etheostoma fonticola*), San Marcos gambusia (*Gambusia gorgei*), Peck's Cave amphipod (*Stygobromus pecki*), Comal Springs dryopid beetle (*Stygoparnus comalensis*), Comal Springs riffle beetle (*Heterlmis comalensis*), ground beetle (*Rhadine exilis*), ground beetle (*Rhadine infernalis*), Helotes mold beetle (*Batrisodes venyivi*), Cokendolpher Cave harvestman (*Texella cockendolpheri*), Robber Baron Cave meshweaver (*Cicurina baronia*), Madla Cave meshweaver (*Circurina madla*), Braken Bat Cave meshweaver (*Circurina venii*), Government Canyon Bat Cave meshweaver (*Cicurina vespera*), Government Canyon Bat Cave spider (*Neoleptoneta microps*), Tooth Cave spider (*Leptoneta myopica*), Bee Creek Cave harvestman (*Texella reddelli*), Bone Cave harvestman (*Texella reyesi*), Kretschmarr Cave mold beetle (*Batrisodes texanus*), and Tooth Cave pseudoscorpion (*Tartarocreagris texana*) within Texas, Oklahoma, New Mexico, Louisiana, and Mississippi.

Permit TE–217655

Applicant: Rachel Barlow, Austin, Texas. Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of the following species: Ground beetle (*Rhadine exilis*), ground beetle (*Rhadine infernalis*), Helotes mold beetle (*Batrisodes venyivi*), Cokendolpher Cave harvestman (*Texella cockendolpheri*), Robber Baron Cave meshweaver (*Cicurina baronia*), Madla Cave meshweaver (*Circurina madla*), Braken Bat Cave meshweaver (*Circurina venii*), Government Canyon Bat Cave meshweaver (*Cicurina vespera*), Government Canyon Bat Cave spider (*Neoleptoneta microps*), Tooth Cave spider (*Leptoneta myopica*), Bee Creek Cave harvestman (*Texella reddelli*), Bone Cave harvestman (*Texella reyesi*), Kretschmarr Cave mold beetle (*Batrisodes texanus*), Tooth Cave pseudoscorpion (*Tartarocreagris texana*), Tooth Cave spider (*Neolptoneta myopica*), Tooth Cave ground beetle (*Rhadine persephone*), and Coffin Cave mold beetle (*Batrisodes texanus*) within Texas

Authority: 16 U.S.C. 1531 *et seq.*

Dated: June 19, 2009.

Brian A. Millsap,

Acting Regional Director, Southwest Region, Fish and Wildlife Service.

[FR Doc. E9–16137 Filed 7–7–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZP02000.L51010000.ER0000. LVRWA09A2400; AZA–34187]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Sonoran Solar Energy Project, Maricopa County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: The Bureau of Land Management (BLM), Phoenix District Office, Lower Sonoran Field Office intends to prepare an Environmental Impact Statement (EIS) to address potential effects of a proposed solar energy project by Boulevard Associates, LLC and by this notice is announcing the beginning of the scoping process and soliciting input on the identification of issues.

DATES: The BLM will announce public scoping meetings to identify relevant issues through news media, newspapers, and BLM's Web site (*http://www.blm.gov/az/st/en.html*) at least 15 days prior to each meeting. We will provide additional opportunities for public participation upon publication of the Draft EIS, including a 45-day public comment period.

ADDRESSES: Comments may be submitted by either of the following methods:

- Mail: Sonoran Solar Energy Project,
- ATTN: Joe Incardine, National Project Manager, BLM Phoenix District Office, Lower Sonoran Field Office, 21605 North 7th Avenue, Phoenix, Arizona 85027–2929.
- Electronic Mail: *sonoransolar@blm.gov.*

FOR FURTHER INFORMATION CONTACT: For information regarding the BLM process or to have your name added to the mailing list, send requests to: ATTN: Sonoran Solar Energy Project, BLM Phoenix District Office, Lower Sonoran Field Office, 21605 North 7th Avenue, Phoenix, Arizona 85027–2929, or call Joe Incardine, 801–524–3833, or e-mail: *Joe_Incardine@blm.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. Boulevard Associates, LLC has applied to BLM for a right of way (ROW) on public lands to construct a concentrated solar thermal (CST) power plant, a 500 kilovolt (kV) transmission line, water supply facilities, a natural gas pipeline, an access road, and other related facilities in the Little Rainbow Valley, east of State Route 85, and south of the Buckeye Hills and the town of Buckeye in Maricopa County, Arizona. The facility would be expected to operate for approximately 30 years. A ROW grant for the construction, operation, and maintenance of this Project would be required from BLM. Additional applicable permits from Federal, State and local agencies may also be required.

Boulevard Associates, LLC would construct up to 375 megawatts (MW) of solar thermal electrical generation with options for natural gas backup and/or thermal storage capabilities. The solar facility would consist of solar fields made up of single-axis-tracking parabolic trough solar collectors. Each collector contains a linear parabolic-shaped reflector (glass mirrors) that focuses the sun's direct radiation on a heat collection element located at the focal point of the parabola. The collectors would track the sun from east to west during the day to ensure the sun is continuously focused on the linear receiver. A heat transfer fluid would be heated as it passes through the receivers and then circulated through a series of heat exchangers to generate high-pressure superheated steam. The steam would power a conventional steam turbine generator which produces electricity. The plant would be made up of one or more power blocks. Each power block would be located near the center of its respective solar field and would contain multiple feedwater heaters, steam generators, steam superheaters, and feedwater pumps.

To optimize the output capacity of the project, both natural gas backup and/or thermal energy storage would be used as needed. Natural gas backup would include the addition of a partial or full load burner arrangement that would generate additional steam when solar energy is absent or insufficient by itself. Annual output from natural gas would be limited to 25 percent of annual capacity to ensure that the plant remains predominantly a solar powered facility. Thermal energy storage would provide the option of transferring some or all of the solar energy into molten salt contained in insulated tanks. Using heat exchangers and pumps designed for

molten salt, the heat could later be extracted to provide generation when the demand for power exceeds the available generation from solar energy, essentially time shifting the solar power to respond to electric demands.

Wet cooling technology would be used for cooling the power generating equipment. Recirculating wet cooling systems use about 6 to 13 acre-feet per year per MW for a system with 3 hours of thermal storage. A mechanical draft cooling tower, cooling water circulating pumps, circulating water piping, valves, and instrumentation would also be located within the facility. Multiple evaporation ponds would be constructed to hold discharge from the cooling towers and steam cycle that can no longer be recycled back into the plant.

The Project would be connected to the electrical grid using a newly constructed, 3 to 4 mile, 500 kV generation tie-line with a point of interconnection at the existing Jojoba Substation, west of the proposed Project site and operated by the Salt River Project. If any upgrades would be required to the Jojoba Substation as a result of this Project, those upgrades would be included in the EIS analysis and ROW grant. The new transmission line and other related facilities that would be developed specifically for this Project would be included in the EIS analysis and included in the ROW grant as appropriate.

The EIS for the Project will analyze the site-specific impacts related to air quality, biological resources, cultural resources, water resources, geological resources and hazards, and hazardous materials handling. The EIS will also analyze land use, noise, paleontological resources, socioeconomics, soils, traffic and transportation, visual resources, waste management, wildlife corridors, health and human safety, and fire protection. Additionally, information on facility design engineering, efficiency, reliability, transmission system engineering and transmission line safety and nuisance will be included in the EIS. Native American Tribal consultations will be conducted in accordance with policy, and Tribal concerns will be given due consideration, including impacts on Indian trust assets. It is anticipated that the EIS process will be completed by December 2010.

To be most helpful, you should submit comments within 30 days after the last public meeting. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from the public review, we cannot guarantee that we will be able to do so.

If the ROW were to be approved by BLM, the concentrated solar thermal power plant facility on public lands would be authorized in accordance with Title V of the Federal Land Policy and Management Act of 1976 and the Federal Regulations at 43 CFR part 2800.

(Authority: 43 CFR part 2800)

Helen M. Hankins,

Acting State Director.

[FR Doc. E9–15974 Filed 7–7–09; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYP00000–L13200000–EL0000, LLWYP00000–L51100000–GA0000–LVEMK09CK320, LLWYP00000–L51100000–GA0000–LVEMK09CK340, LLWYP00000–L51100000–GA0000–LVEMK09CK370; WYW164812, WYW174596, WYW172388, WYW172685, WYW173408, WYW176095]

Notice of Availability and Notice of Hearing for the Wright Area Coal Draft Environmental Impact Statement That Includes Four Federal Coal Lease-by-Applications, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA) and the Federal Land Policy and Management Act of 1976 (FLPMA), the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (DEIS) for the Wright Area Coal project that contains four Federal coal Lease-by-Applications (LBAs), and by this Notice is announcing a public hearing requesting comments on the DEIS, on the Maximum Economic Recovery (MER), and on the Fair Market Value (FMV) of the Federal coal resources.

DATES: To ensure comments will be considered, the BLM must receive written comments on the Wright Area Coal DEIS, MER, and FMV within 60 days following June 26, 2009, the date the Environmental Protection Agency published the Notice of Availability in the **Federal Register** [74 FR 30570]. The public hearing will be held at 7 p.m. MST, on July 29, 2009, at the Clarion Inn, 2009 S. Douglas Hwy., Gillette, Wyoming.

ADDRESSES: You may submit comments by any of the following methods:

- *E-mail: casper_wymail@blm.gov.* Please include ''Wright Area Coal DEIS—Sarah Bucklin'' in the subject line.
- *Fax:* 307–261–7587, Attn: Sarah Bucklin.
- *Mail:* Wyoming High Plains District Office, Bureau of Land Management, Attn: Sarah Bucklin, 2987 Prospector Drive, Casper, Wyoming 82604.
- Written comments may also be hand-delivered to the BLM Wyoming High Plains District Office in Casper.

Copies of the DEIS are available at the following BLM office locations: BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009; and BLM Wyoming High Plains District Office, 2987 Prospector Drive, Casper, Wyoming 82604. The DEIS is available electronically at the following Web site: *http://www.blm.gov/wy/st/en/info/NEPA/cfodocs/WrightCoal.html.*

FOR FURTHER INFORMATION CONTACT: Sarah Bucklin or Mike Karbs, BLM Wyoming High Plains District Office, 2987 Prospector Drive, Casper, Wyoming 82604. Ms. Bucklin or Mr. Karbs may also be reached at (307) 261–7600 or by e-mail at *casper_wymail@blm.gov.*

SUPPLEMENTARY INFORMATION: The DEIS analyzes the potential impacts of issuing leases for six Federal coal maintenance tracts serialized as WYW164812 (North Hilight Field Tract), WYW174596 (South Hilight Field Tract), WYW172388 (West Hilight Field Tract), WYW172685 (West Jacobs Ranch Tract), WYW173408 (North Porcupine Tract), and WYW176095 (South Porcupine Tract) in the decertified Powder River Federal Coal Production Region, Wyoming. The BLM is considering issuing these six coal leases as a result of four applications filed in accordance with 43 CFR part 3425 between October 2005 and September 2006. Supplementary information by tract is as follows:

North and South Hilight Field Tracts

On October 7, 2005, Ark Land Company applied for Federal coal reserves in two maintenance tracts encompassing approximately 4,590.19 acres and 588.2 million tons of coal as estimated by the applicant. The tracts are adjacent to the Black Thunder Mine operated by Thunder Basin Coal Company. BLM determined that the application would be processed as two separate tracts. The tracts are referred to

as the North Hilight Field Tract, case file number WYW164812, and the South Hilight Field Tract, case file number WYW174596. As applied for, the coal in the tracts would potentially extend the life of the mine by as many as four years.

As applied for, the North Hilight Field Tract includes approximately 263.4 million tons of recoverable coal underlying the following lands in Campbell County, Wyoming:

T. 44 N., R. 70 W., 6th PM, Wyoming

Section 19: Lots 5 through 20;

T. 44 N., R. 71 W., 6th PM, Wyoming

Section 23: Lots 1 through 16;
Section 24: Lots 1 through 16;
Section 26: Lots 1 through 16.

Containing 2,613.50 acres, more or less.

As applied for, the South Hilight Field Tract includes approximately 213.6 million tons of recoverable coal underlying the following lands in Campbell County, Wyoming:

T. 43 N., R.71 W., 6th PM, Wyoming

Section 23: Lots 1 through 16;
Section 26: Lots 1 through 16;
Section 35: Lots 1 through 16.

Containing 1,976.69 acres, more or less.

West Hilight Field Tract

On January 17, 2006, Ark Land Company applied for Federal coal reserves in a maintenance tract containing approximately 2,370.52 acres and approximately 428 million tons of coal as estimated by the applicant. The tract is adjacent to the Black Thunder Mine operated by Thunder Basin Coal Company. The tract, which is referred to as the West Hilight Field Tract, has been assigned case file number WYW172388. As applied for, the coal in the tract would potentially extend the life of the mine by as many as three years.

As applied for, the West Hilight Field Tract includes approximately 377.9 million tons of recoverable coal underlying the following lands in Campbell County, Wyoming:

T. 43 N., R. 71 W., 6th PM, Wyoming

Section 8: Lots 1, 2, and 7 through 16;
Section 9: Lots 1 through 16;
Section 10: Lots 3 through 6, 11 through 14;
Section 17: Lots 1 through 16;
Section 20: Lots 1 through 4;
Section 21: Lots 3, 4.

Containing 2,370.52 acres, more or less.

West Jacobs Ranch Tract

On March 24, 2006, Jacobs Ranch Coal Company applied for Federal coal reserves in a maintenance tract containing approximately 5,944.37 acres and approximately 956 million tons of coal as estimated by the applicant. The tract is adjacent to the Jacobs Ranch Mine. The tract, which is referred to as the West Jacobs Ranch Tract, has been assigned case file number WYW172685. As applied for, the coal in the tract would potentially extend the life of the mine by as many as 17 years.

As applied for, the West Jacobs Ranch Tract includes approximately 669.6 million tons of recoverable coal underlying the following lands in Campbell County, Wyoming:

T. 43 N., R. 71 W., 6th PM, Wyoming

Section 3: Lots 2, 5 through 19;
Section 4: Lots 5 through 20;
Section 5: Lots 5 through 20;

T. 44 N., R. 71 W., 6th PM, Wyoming

Section 22: Lots 9 through 16;
Section 27: Lots 1 through 16;
Section 28: Lots 1 through 3, 5 through 16;
Section 29: Lots 5 through 15 and SE¼SE¼;
Section 32: Lots 1 through 15 and SW¼SE¼;
Section 33: Lots 1 through 15 and NE¼SE¼;
Section 34: Lots 1 through 16.

Containing 5,944.37 acres, more or less.

North and South Porcupine Tracts

On September 29, 2006, BTU Western Resources, Inc. applied for Federal coal reserves in three maintenance tracts encompassing approximately 5,116.65 acres and approximately 598 million tons of coal as estimated by the applicant. The tracts are adjacent to the North Antelope Rochelle Mine. On October 12, 2007, BTU Western Resources, Inc. filed a request with BLM to modify its application and increase the lease area and coal volume to approximately 8,981.74 acres and approximately 1,179.1 million tons of coal as estimated by the applicant. BLM determined that the modified application would be processed as two separate maintenance tracts. The tracts are referred to as the North Porcupine Tract, case file number WYW173408, and the South Porcupine Tract, case file number WYW176095. As applied for, the coal in the tracts would potentially extend the life of the mine by as many as ten years.

As applied for, the North Porcupine Tract includes approximately 601.2 million tons of recoverable coal underlying the following lands in Campbell County, Wyoming:

T. 42 N., R. 70 W., 6th PM, Wyoming

Section 19: Lots 13 through 20;
Section 20: Lots 9 through 16;
Section 21: Lots 9 through 16;
Section 22: Lots 9 through 16;
Section 26: Lots 3 through 6, 9 through 16;
Section 27: Lots 1 through 16;
Section 28: Lots 1 through 4;
Section 29: Lots 1 through 4;
Section 30: Lots 5 through 8;

T. 42 N., R. 71 W., 6th PM, Wyoming

Section 22: Lots 10 through 15, 21 through 24;
Section 23: Lots 9 through 16;
Section 24: Lots 9 through 16;
Section 25: Lots 1 through 4;
Section 26: Lots 1 through 6, 11 through 14;
Section 27: Lots 2 through 6, 9, 12, 15 through 30;
Section 34: Lots 1 through 3, 6 through 11;
Section 35: Lots 3 through 6, 11 through 14.

Containing 5,795.78 acres, more or less.

As applied for, the South Porcupine Tract includes approximately 309.7 million tons of recoverable coal underlying the following lands in Campbell County, Wyoming:

T. 41 N., R. 70 W., 6th PM, Wyoming

Section 7: Lots 7 through 10, 15 through 18;
Section 18: Lots 6 through 11, 14 through 19;

T. 41 N., R. 71 W., 6th PM, Wyoming

Section 1: Lots 5 through 20;
Section 12: Lots 1 through 16;
Section 13: Lots 1 through 16;
Section 14: Lots 1, 8, 9, 16;
Section 23: Lots 1, 8 (N½);
Section 24: Lots 2 through 4, 5 (N½), 6 (N½), 7 (N½).

Containing 3,185.96 acres, more or less.

Consistent with Federal regulations under NEPA and the Mineral Leasing Act of 1920, as amended, the BLM must prepare an environmental analysis prior to holding competitive Federal coal lease sales. The Powder River Regional Coal Team recommended that BLM process these four coal lease applications after they reviewed the tracts that were applied for by Ark Land Company and Jacobs Ranch Coal Company at a public meeting held on April 19, 2006, in Casper, Wyoming, and the tracts that were applied for by BTU Western Resources, Inc., at a public meeting held on January 18, 2007, in Casper, Wyoming.

Lands in the North Hilight Field, South Hilight Field, West Hilight Field, North Porcupine, and South Porcupine Tracts contain Federal surface administered by the Forest Service and private surface estate which overlies the Federal coal. Lands in the West Jacobs Ranch Tract contain all private surface estate which overlies the Federal coal.

Cooperating agencies in the preparation of this EIS include: The Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of Agriculture Forest Service (USFS), Wyoming Department of Transportation, Wyoming Department of Environmental Quality (WDEQ) Land Quality and Air Quality Divisions, and the Converse County Board of Commissioners. Before the tracts can be leased, the Forest Service must consent

to leasing the federal coal that is located on USFS-administered lands.

The Black Thunder Mine, Jacobs Ranch Mine, and North Antelope Rochelle Mine are operating under approved mining permits from the WDEQ Land Quality and Air Quality Divisions.

If the tracts are leased to existing mines, the new leases must be incorporated into the existing mining and reclamation plans for the adjacent mines. Before the Federal coal in each tract can be mined, the Secretary of the Interior must approve the revised Mineral Leasing Act (MLA) mining plan for the mine in which each tract will be included. OSM is the Federal agency that is responsible for recommending approval, approval with conditions, or disapproval of the revised MLA mining plan to the Office of the Secretary of the Interior.

The DEIS analyzes and discloses to the public the direct, indirect, and cumulative environmental impacts associated with leasing six Federal coal tracts in the Wyoming portion of the Powder River Basin. A copy of the DEIS has been sent to affected Federal, State, and local government agencies; persons and entities identified as potentially being affected by a decision to lease the Federal coal in each of the tracts; and persons who indicated to the BLM that they wished to receive a copy of the DEIS. The purpose of the public hearing is to solicit comments on the DEIS, on the proposed competitive sales of the six Federal coal lease maintenance tracts, and on the FMV and MER of the Federal coal.

The DEIS analyzes leasing the six Wright Area coal tracts as the Proposed Action. Under the Proposed Action, a competitive sale would be held and a lease issued for Federal coal contained in the tracts as applied for by each of the applicants. As part of the coal leasing process, the BLM is evaluating adding additional Federal coal to the tracts to avoid bypassing coal or to prompt competitive interest in unleased Federal coal in the area. The alternate tract configurations for each of the LBAs that BLM is evaluating are described and analyzed as separate alternatives in the DEIS. Under these alternatives, competitive sales would be held and leases would be issued for Federal coal lands included in tracts modified by the BLM. The DEIS also analyzes the alternative of rejecting the application(s) to lease Federal coal as the No Action Alternative. The Proposed Actions and alternatives for each of the LBAs being considered in the DEIS are in conformance with the Approved Resource Management Plan for Public Lands Administered by the Bureau of Land Management Buffalo Field Office (2001) and the USDA-Forest Service Land and Resource Management Plan for the Thunder Basin National Grassland (2002).

Requests to be included on the mailing list for this project and requests for copies of the DEIS may be sent in writing, by fax, or electronically to the addresses previously stated at the beginning of this notice. For those submitting comments on the DEIS, please make the comments as specific as possible with reference to page numbers and sections of the document. Comments that contain only opinions or preferences will not receive a formal response; however, they will be considered as part of the BLM decision-making process.

Please note that public comments and information submitted to the BLM including the commenter's name, street address, and e-mail address will be available for public review and disclosure at the above address during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6.

Mary E. Trautner,

Acting Associate State Director.

[FR Doc. E9–16048 Filed 7–7–09; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1420–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 4, 9, 10, 11, and 12 in T. 11 N., R. 16 E., Boise Meridian, Idaho, Group Number 1264, was accepted April 28, 2009.

The field notes representing the perpetuation of Angle Point Number 1, in section 27 in T. 9 S., R. 20 E., Boise Meridian, Idaho, Group Number 1000, were accepted May 7, 2009.

The plat representing the dependent resurvey of portions of the south boundary, subdivisional lines, and subdivision of section lines, and the subdivision of sections 26, 29, 32, 33, and 34, and the metes-and-bounds survey of lot 2 in section 20, T. 7 S., R. 35 E., Boise Meridian, Idaho, Group Number 1148, was accepted May 7, 2009.

The supplemental plat of section 20, lots 1 and 2, T. 7 S., R. 35 E., Boise Meridian, Idaho, was prepared to amend certain erroneous acreages as depicted on the plat accepted May 7, 2009.

The plat representing the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines, and subdivision of sections 27 and 34, T. 14 S., R. 22 E., Boise Meridian, Idaho, Group Number 1276, was accepted June 25, 2009.

Dated: July 2, 2009.

Stanley G. French,

Chief Cadastral Surveyor for Idaho.

[FR Doc. E9–16149 Filed 7–7–09; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORB00000.L10600000.HG0000; HAG 09–0224]

Notice of Public Meeting

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Bureau of Land Management (BLM) Burns District has scheduled a public meeting to discuss agency procedures for gathering wild horses and how helicopters and other motorized equipment help the process.

The public is encouraged to attend and hear information from BLM about the issue.

DATES: Thursday, August 13, 2009, 5:30 p.m. PDT.

ADDRESSES: Harney County Senior Center, 17 South Alder, in Burns, Oregon.

FOR FURTHER INFORMATION CONTACT: Tara Martinak, (541) 573–4519, or *Tara_Martinak@blm.gov* or the Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738.

SUPPLEMENTARY INFORMATION: The BLM estimates about 36,000 wild horses and burros are roaming on BLM-administered rangelands in 10 Western states. Wild horses and burros have virtually no natural predators and their herd sizes can double about every four years. As a result, the agency must remove thousands of animals from the range each year to control herd sizes. The estimated current free-roaming population is 9,400 more than the level that the BLM has determined can exist in balance with other public rangeland resources and uses. Oregon/Washington BLM averages 400–500 horses gathered annually from public lands. For 2009, gathers are tentatively planned for Herd Management Areas within the Burns, Lakeview, and Prineville Districts.

Dated: July 1, 2009.
Approved:

Kenny McDaniel,

District Manager.

[FR Doc. E9–16145 Filed 7–7–09; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZP01000–09–L14300000.ES0000; AZA–32053]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands in Maricopa County, Arizona, have been examined by the Bureau of Land Management (BLM) and found suitable for classification for lease and/or conveyance to the Town of Buckeye under the provisions of the R&PP Act, as amended, 43 United States Code (U.S.C.) 869 *et seq.,* and under Sec. 7 of the Taylor Grazing Act, 43 U.S.C. 315(f), and Executive Order No. 6910.

Gila and Salt River Meridian

T. 2 N., R. 3 W.,
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 5, lot 1, SE¼NE¼, and E½SE¼;
Sec. 8, E½E½;
Sec. 9;
Sec. 14, W½;
secs. 15 and 17;
Sec. 18, lots 1 to 4, inclusive, and E½E½;
Sec. 19, lots 1 to 4, inclusive, and E½E½;
Secs. 20, 21, and 22;
Sec. 26, S½;
Sec. 27, N½, N½S½, SE¼SW¼, and S½SE¼;
Sec. 28, N½, N½S½, S½SW¼, and SW¼SE¼;
Sec. 29;
Sec. 33, lots 1 to 4, inclusive, W½NE¼, NW¼, and N½S½;
Sec. 34, lot 1, N½NE¼, and NE¼NW¼;
Sec. 35, NE¼NE¼, E½NW¼NE¼, and W½NW¼NW¼.
The area described contains 8675.36 acres in Maricopa County.

The Town of Buckeye has applied for more than the 6,400 acre limitation for recreation uses in a year. Under the provisions of the R&PP Act, BLM will not lease or convey more than 6,400 acres (with limited exceptions) to the Town of Buckeye in any one calendar year.

The Town of Buckeye has submitted a statement in compliance with the regulations at 43 Code of Federal Regulations (CFR) 2741.4(b). The Town of Buckeye proposes to use the land as open space and for recreational park purposes. Related facilities will include hiking trails, picnicking and camping areas, restroom facilities, and parking.

DATES: Submit comments on or before August 24, 2009.

ADDRESSES: Detailed information including, but not limited to, a proposed development plan and documentation relating to compliance with applicable environmental and cultural resource laws is available for review at the Bureau of Land Management, Phoenix District, 21605 North 7th Avenue, Phoenix, Arizona 85027. Written comments should also be directed to this address.

FOR FURTHER INFORMATION CONTACT: Jo Ann Goodlow, Realty Specialist, at 623–580–5548.

SUPPLEMENTARY INFORMATION: The lands are not needed for any Federal purposes.

Lease and/or conveyance of the lands for recreational or public purposes use is consistent with the BLM *Amendment and Environmental Assessment to the Lower Gila North Management Framework Plan and the Lower Gila South Resource Management Plan* dated July 2005, and would be in the public interest.

All interested parties will receive a copy of this notice once it is published in the **Federal Register**. The notice will be published in the newspaper of local circulation for 3 consecutive weeks.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws.

The lease and/or patent of the land, if issued, will be subject to the following terms, conditions, and reservations:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States Act of August 30, 1890, 26 Statute (Stat.) 391 (43 U.S.C. 945).

2. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior, including, but not limited to, those terms required by 43 CFR 2741.9.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. All valid existing rights documented on the official public land records at the time of lease or patent issuance.

5. *CERCLA Term:* ''Pursuant to the requirements established by Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, (42 U.S.C. 9620 (h)) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988, (100 Stat. 1670) notice is hereby given that the above-described land has been examined and no evidence was found to indicate that any hazardous substances had been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.''

6. *Indemnification Term:* ''All lessees, purchasers, or patentees, by accepting a lease or patent, covenant and agree to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentees or their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the lessee's/patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the lessee/patentee and their employees, agents,

contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the leased/patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, State, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) judgments, claims, or demands of any kind assessed against the United States; (3) costs, expenses, or damages of any kind incurred by the United States; (4) releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances, as defined by Federal or State environmental laws, off, on, into, or under land, property, and other interests of the United States; (5) activities by which solids or hazardous substances or wastes, as defined by Federal and State environmental laws are generated, released, stored, used, or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (6) natural resource damages as defined by Federal and State law. Lessee/patentee shall stipulate that it will be solely responsible for compliance with all applicable Federal, State, and local environmental and regulatory provisions, throughout the life of the facility, including any closure or post-closure requirements that may be imposed with respect to any physical plant or facility upon the real property under any Federal, State, or local environmental laws or regulatory provisions. This covenant shall be construed as running with the above described parcel of land patented or otherwise conveyed by the United States, and may be enforced by the United States in a court of competent jurisdiction.''

Classification Comments: Interested persons may submit comments involving the suitability of the land for development of open space and recreational park purposes. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested persons may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for open space and recreational park purposes. Any adverse comments will be reviewed by the BLM State Director. In the absence of any adverse comments, the classification will become effective on September 8, 2009. The lands will not be offered for conveyance until after the classification becomes effective.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment,—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2741.5.

Teresa A. Raml,

District Manager.

[FR Doc. E9–16129 Filed 7–7–09; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES002000.L1430000.ES0000; FLES 051657]

Notice of Realty Action: Recreation and Public Purposes Act (R&PP) Act Classification and Conveyance; Lee County, FL

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for lease and/or conveyance to the City of Sanibel Island under the provisions of the Recreation and Public Purposes (R&PP) Act of 1926, as amended (43 U.S.C. 869 *et seq.*), approximately 44.77 acres of public land in Sanibel Island, Lee County, Florida. The City of Sanibel Island proposes to use the land for a park.

DATES: Interested parties may submit written comments regarding this proposed classification or lease/conveyance of public land until August 24, 2009.

ADDRESSES: Please submit your written comments to the Field Manager, Bureau of Land Management—Eastern States (BLM–ES), Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206. Comments received in electronic form, such as e-mail or facsimile, will not be considered.

FOR FURTHER INFORMATION CONTACT: Vicky Craft, BLM–ES Jackson Field Office at (601) 977–5435 or at the address above.

SUPPLEMENTARY INFORMATION: In accordance with Section 7 of the Act of June 28, 1943, as amended, (43 U.S.C 315f), and Executive Order (EO) 6964, the following described public land in Lee County, Florida has been examined and found suitable for classification for lease and/or conveyance under the provisions of the R&PP Act, as amended, (43 U.S.C. 869 *et seq.*) and, accordingly, opened for only that purpose.

Tallahassee Meridian

T. 46 S., R.23 E.,
Sec. 21, lots 1 and 4.

The area described contains 44.77 acres, more or less, in Lee County, Florida.

The parcel contains the Sanibel Island Lighthouse and is located on the eastern point of the island. The land had been withdrawn to the United States Coast Guard (USCG) for lighthouse purposes by Executive Order on December 19, 1883. The withdrawal was revoked by Public Land Order (PLO) No. 7711, which made the land available for lease and/or conveyance under the R&PP Act. Conveyance of the land to the City of Sanibel Island is consistent with the Florida Resource Management Plan, dated June 21, 1995, and would be in the public interest. Additional detailed information pertaining to this application, including a plan of development, and map depicting the public land is available for review at the BLM–ES Jackson Field Office.

The City of Sanibel Island has not applied for more than the 640 acre limitation for recreation uses in a year and has submitted a statement in compliance with the regulations at 43 CFR 2741.4(b). The City of Sanibel Island proposes to use the land as a park.

The City of Sanibel Island has applied for patent to the land under the R&PP Act of 1926. The patent or a lease, if issued, would be subject to the following terms, conditions and reservations to the United States:

1. Provisions of the R&PP Act of 1926, as amended, and all applicable regulations of the Secretary of the Interior, including, but not limited to, those terms required by 43 CFR 2741.9.

2. Valid existing rights.

3. Reserved right of the USCG to maintain the light and have ingress and egress rights to the light.

4. All minerals are reserved to the United States, together with the right to prospect, mine and remove the minerals.

5. Terms and conditions identified through the site specific environmental analysis.

6. Any other rights or reservations that the authorized officer deems appropriate to ensure public access and proper management of Federal land and interest therein.

7. The lessee/patentee, its successors or assigns, by accepting a lease/patent, agrees to indemnify, defend, or hold the United States, its officers, agents, representatives, and employees (hereinafter ''United States'') harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising out of, or in connection with the lessee's/patentee's use, occupancy, or operations on the leased/patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts or omissions of the patentee and its employees, agents, contractors, lessees, or any third party, arising out of or in connection with the lessee's/patentee's use, occupancy or operations on the patented real property which cause or give rise to, in whole or in part: (1) Violations of Federal, State, and local laws and regulations that are now, or may in future become, applicable to the real property and/or applicable to the use, occupancy, and/or operations thereon; (2) Judgments, claims, or demands of any kind assessed against the United States; (3) Costs, expenses or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s), pollutant(s) or contaminant(s), and/or petroleum product or derivative of a petroleum product, as defined by Federal and state environmental laws; off, on, into or under land, property and other interests of the United States; (5) Other activities by which solid or hazardous substances(s) or waste(s), pollutant(s) or contaminant(s), or petroleum product or derivative of a petroleum product as defined by Federal and State environmental laws are generated, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to the said solid or hazardous substance(s) or waste(s), pollutant(s) or contaminant(s), or petroleum product or derivative of a petroleum product; (6) Natural resource damages as defined by Federal and State laws. Lessee/Patentee shall stipulate that it will be solely responsible for compliance with all applicable Federal, State and local environmental laws and regulatory provisions, throughout the life of the facility, including and closure and/or post-closure requirements that may be imposed with respect to any physical plant and/or facility upon the real property under any Federal, State or local environmental laws or regulatory provisions. In the case of a patent being issued, this covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

Upon publication of this notice in the **Federal Register,** the land described above will be segregated from all other forms of disposal or appropriation under the public land laws, including the general mining laws, except for lease and/or conveyance under the R&PP Act and leasing under the mineral leasing laws.

Classification Comments: Interested persons may submit comments involving the suitability of the land for a park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested persons may submit comments regarding the specific use proposed in the application and plan of development and the management plan, whether the BLM followed proper administrative procedures in reaching the decision to lease or convey under the R&PP Act, or any other factor not directly related to the suitability of the land for R&PP use.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Any adverse comments will be reviewed by the State Director of the BLM–ES. In the absence of any adverse comments, the classification of the land described in the notice will become effective 60 days after publication of this notice in the **Federal Register.** The land will not be conveyed until after the classification becomes effective.

Corey Grant,

Acting State Director.

[FR Doc. E9–16133 Filed 7–7–09; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVC02000.L57000000.BX0000; 9–08807; TAS: 14X5017]

Temporary Closure of Public Lands in Washoe County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Closure.

SUMMARY: Pursuant to 43 CFR 8364.1 certain public lands near Stead, Nevada, will be temporarily closed to all public use. This action is being taken to provide for public safety during the 2009 Reno National Championship Air Races.

DATES: *Effective Dates:* Closure to all public use September 12 through September 20, 2009.

FOR FURTHER INFORMATION CONTACT: Linda Kelly, Sierra Front Field Office Manager at (775) 885–6118.

SUPPLEMENTARY INFORMATION: This closure is authorized under the provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et. seq.* This closure applies to all public use, including pedestrian use and vehicles. The public lands affected by this closure are described as follows:

Mount Diablo Meridian, Nevada

T. 21 N., R. 19 E.,
Sec. 8, N½NE¼, SE¼NE¼, E½SE¼;
Sec. 16, N½, SE¼.
The area described contains 680 acres, more or less.

Exceptions: Closure restrictions do not apply to event officials, medical/rescue, law enforcement, and agency personnel monitoring the events.

Penalties: Any person who fails to comply with this closure order is subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisonment for not more than 12 months.

(Authority: 43 CFR 8360.0–7 and 8364.1)

Bryant Smith,

Associate Manager, Carson City District.

[FR Doc. E9–16138 Filed 7–7–09; 8:45 am]

BILLING CODE 4310–HC–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 29–30, 2010.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: The Windsor Court Hotel, 300 Gravier Street, New Orleans, LA 70130.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: July 1, 2009.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. E9–16016 Filed 7–7–09; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities: Proposed Information Collection Request for the Evaluation of the Access Point Initiative

AGENCY: Employment and Training Administration.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the collection of data about the Access Point Initiative.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before September 8, 2009.

ADDRESSES: Submit written comments to Kevin Thompson, Room S–4231, Employment and Training Administration, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–2925 (this is not a toll-free number). Fax: 202–693–3015; or by e-mail at *Thompson.Kevin@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. *Background:* This information collection is intended to collect data with which to evaluate the ETA's Access Point Initiative. Access Points are employment information centers and satellites to DOL-funded One Stop Career Centers. While One Stop Centers provide employment-related services to a large number and wide array of job seekers, some of the individuals on the margins of the labor market, such as high school dropouts, ex-offenders, and persons with low occupational skill levels in high-poverty neighborhoods, have still not been reached by the One Stop system. To reach them and to provide them with employment services in a cost-effective manner, the Department of Labor started the Access Point initiative, providing funds for training in how to establish Access Points. Access Points are set up and run by local Faith-Based and Community Organizations (FBCOs) as a volunteer effort. They are located in areas that include a relatively large number of unemployed individuals with few of the resources needed to find stable employment. Access Points provide job seekers from their neighborhoods with job-search information, some services, and referrals to One Stops and other service providers.

A two-stage training process is used to establish Access Points: First, contractors train local coordinators (called SHARE Network coordinators); and second, the SHARE Network coordinators train FBCO personnel in how to establish and run Access Points. SHARE Networks are statewide computerized networks that provide employment-related information at the local level. SHARE Networks include non-profit FBCOs (including all Access Points), for-profit organizations, and government agencies that provide employment services and choose to participate in the network.

Three related surveys are proposed to collect data for an evaluation report to ETA:

(1) A SHARE Network Coordinator Survey that assesses training received and relations with Access Points;

(2) An Access Point POC (Point-of-Contact) Survey that provides data on the implementation and functioning of Access Points; and

(3) A One Stop Director Survey that provides an assessment of Access Points and their relation to the local workforce system.

These three surveys are electronic and will be conducted via E-mail and a link to a centralized server.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. *Current Actions:*

Type of Review: New collection.

Agency: Employment and Training Administration.

Title: Evaluation of the Access Point Initiative.

OMB Number: 1205–0NEW.

Affected Public: Not-for-profit institutions; State, local, or tribal government.

Form: None.

Total Respondents: Exhibit 1 shows the annual number of respondents for all three surveys, together with the anticipated response rate, the average time required to complete each survey, the cost per respondent per survey, and the total cost per survey. The time estimates and hourly costs are derived from pretests with nine respondents for each survey. All three surveys are population surveys; statistical sampling will not be used.

EXHIBIT 1—ACCESS POINT EVALUATION RESPONDENTS, BURDEN HOURS, AND COST FOR THREE SURVEYS

Survey	Population	Response rates percent	Total respondents	Hours per response	Total hours	Pay rate	Total cost
SHARE Network Coordinators*	230	75	173	0.17	29	$20.00	$587
Access Point POCs*	300	75	225	0.28	63	19.00	1,197
One Stop Center Directors*	80	75	60	0.1	6	36.00	216

* One-time surveys.

The SHARE Network Coordinator, Access Point POC, and One Stop Director Surveys are one-time 2009 data collections. The total population to be surveyed is therefore 230 + 300 + 80 = 610.

The total hours requested: 98.

Frequency: Three one-time surveys are to be administered in 2009—the SHARE Network Coordinator, Access Point POC, and One Stop Director Surveys.

Total Responses: 458.

Average Time per Response, based on pretests: Access Point POC Survey—17 minutes (0.28 hours) SHARE Network Coordinator Survey—10 minutes (0.17 hours) One Stop Director Survey—6 minutes (0.10 hours)

Estimated Total Burden Hours: 98.

Total Burden Cost (operating/maintaining): Per-hour costs are estimated from pretest survey data as follows: SHARE Network Coordinator $20/hr.; Access Point POCs $19/hr; One Stop Center Director $36/hr. Access Point customers are unemployed but are assigned a minimum-wage cost of $7.25/hr., which takes effect in July, 2009. The costs for 2009 are:

SHARE Network Coordinator Survey	$587
Access Point POC Survey	1197
One Stop Director Survey	216
Total	2000

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: At Washington, DC on June 30, 2009.

Gay M. Gilbert,

Administrator, Office of Workforce Investment, Employment and Training Administration.

[FR Doc. E9–16047 Filed 7–7–09; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of National Council on the Humanities

AGENCY: The National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice of Meeting.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that the National Council on the Humanities will meet in Washington, DC on July 23–24, 2009.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on July 23–24, 2009 will not be open to the public pursuant to subsections (c)(4), (c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the sessions on July 23, 2009 will be as follows:

Committee Meetings

(Open to the Public)

Policy Discussion

9–10:30 a.m.
Challenge Grants and Federal/State Partnership—Room 510A.
Digital Humanities and Preservation and Access—Room 415.
Education Programs—Room M–07.
Public Programs—Room 421.

(Closed to the Public)

Discussion of Specific Grant Applications and Programs Before the Council

10:30 a.m. until Adjourned
Challenge Grants and Federal/State Partnership—Room 510A.
Digital Humanities and Preservation and Access—Room 415.
Education Programs—Room M–07.
Public Programs—Room 421.
2–3:30 p.m.
Jefferson Lecture/National Humanities Medals—Room 527.

The morning session of the meeting on July 24, 2009 will convene at 9 a.m., in the first floor Council Room M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

A. Minutes of the Previous Meeting
B. Reports
1. Introductory Remarks
2. Staff Report
3. Congressional Report
4. Reports on Policy and General Matters
a. Challenge Grants
b. Federal/State Partnership
c. Digital Humanities
d. Preservation and Access
e. Education Programs
f. Public Programs
g. Jefferson Lecture/National Humanities Medals

The remainder of the proposed meeting will be given to the consideration of specific applications and will be closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Michal P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW.,

Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Michael P. McDonald,

Advisory Committee, Management Officer.

[FR Doc. E9–16123 Filed 7–7–09; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* August 3, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Early Modern European History in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

2. *Date:* August 3, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Modern European History in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

3. *Date:* August 4, 2009.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for Research, submitted to the Office of Challenge Grants, at the May 5, 2009 deadline.

4. *Date:* August 4, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for British Literature I in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

5. *Date:* August 4, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for British Literature II in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

6. *Date:* August 5, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for American History I in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

7. *Date:* August 5, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for American History II in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

8. *Date:* August 6, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for African and Middle Eastern Studies in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

9. *Date:* August 6, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Ancient and Classical Studies in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

10. *Date:* August 10, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Religious Studies II in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

11. *Date:* August 10, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Romance Studies in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

12. *Date:* August 12, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Film, Media, and Technology in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

13. *Date:* August 12, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Religious Studies I in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

14. *Date:* August 13, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for American Literature I in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

15. *Date:* August 13, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for American Literature II in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

16. *Date:* August 14, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Sociology and Psychology in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

17. *Date:* August 14, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for American History III in Fellowships, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

18. *Date:* August 17, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Faculty Research Awards I in Faculty Research Awards,

submitted to the Division of Research Programs, at the May 5, 2009 deadline.

19. *Date:* August 24, 2009.

Time: 8:30 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Faculty Research Awards II in Faculty Research Awards, submitted to the Division of Research Programs, at the May 5, 2009 deadline.

Michael P. McDonald,

Advisory Committee, Management Officer.

[FR Doc. E9–16071 Filed 7–7–09; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit modification received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by August 7, 2009. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Description of Permit Modification Requested: The Foundation issued a permit (2008–016) to Dr. Robert A. Garrott on October 1, 2007. The issued permit allows the applicant to census, tag, weigh, and collect blood and tissue samples of Weddell seals and instrument mammals (Antarctic Fur, Leopard, Southern Elephant, Ross, Weddell and Crabeater seals) and seabirds (Chinstrap and Gentoo penguins, Cape Petrels, Giant Petrels, Brown Skuas, South Pole Skuas, Sheathbills, Kelp gulls, and Blue-eyed Shag).

The applicant requests a modification to his permit to temporarily attach temperature logger tags on Weddell pups to determine how much time the mothers spend in the water teaching their pups to swim, forage, and evade aggressive encounters with other seals. The data would also reveal how much time the pups spend in the water which may influence their weight when weaned and their ultimate probability of survival once weaned.

Location: Ross Sea and McMurdo Sound.

Dates: October 1, 2009 to February 28, 2012.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. E9–15982 Filed 7–7–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On April 27, 2009, the National Science Foundation published a notice in the **Federal Register** of a permit application received. A permit was issued on June 30, 2009 to: Ross Virginia; Permit No. 2010–001.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. E9–15988 Filed 7–7–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0282]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–1213.

FOR FURTHER INFORMATION CONTACT: Brian Lee, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–2916 or e-mail to *Brian.Lee@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), titled, ''Containment Isolation Provisions for Fluid Systems),'' is temporarily identified by its task number, DG–1213, which should be mentioned in all related correspondence. DG–1213 is proposed Revision 1 of Regulatory Guide 1.141.

DG–1213 describes updated methods that the NRC staff considers acceptable for use in complying with the Commission's requirements for containment isolation of fluid systems.

Title 10, of the Code of Federal Regulations, Part 50, ''Domestic Licensing of Production and Utilization Facilities'' (10 CFR Part 50), Appendix A, ''General Design Criteria for Nuclear Power Plants,'' General Design Criteria (GDC) 54, 55, 56, and 57 establishes that piping systems that penetrate the primary reactor containment be provided with isolation capabilities that reflect the importance to safety of isolating these piping systems.

II. Further Information

The NRC staff is soliciting comments on DG–1213. Comments may be accompanied by relevant information or supporting data and should mention DG–1213 in the subject line. Comments submitted in writing or in electronic

form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Personal information will not be removed from your comments. You may submit comments by any of the following methods:

1. *Mail comments to:* Rulemaking and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. *Federal e-Rulemaking Portal:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2009–0282]. Address questions about NRC dockets to Carol Gallagher, 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

3. *Fax comments to:* Rulemaking and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 492–3446.

Requests for technical information about DG–1213 may be directed to the NRC contact, Brian Lee at (301) 415–2916 or e-mail to *Brian.Lee@nrc.gov.*

Comments would be most helpful if received by August 28, 2009. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–1213 are available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML090230478.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 30th day of June 2009.

For the Nuclear Regulatory Commission.

Mark P. Orr,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9–16144 Filed 7–7–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Meetings; Sunshine Act

Sunshine Act Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of July 6, 13, 20, 27, August 3, 10, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of July 6, 2009

There are no meetings scheduled for the week of July 6, 2009.

Week of July 13, 2009—Tentative

There are no meetings scheduled for the week of July 13, 2009.

Week of July 20, 2009—Tentative

There are no meetings scheduled for the week of July 20, 2009.

Week of July 27, 2009—Tentative

There are no meetings scheduled for the week of July 27, 2009.

Week of August 3, 2009—Tentative

There are no meetings scheduled for the week of August 3, 2009.

Week of August 10, 2009—Tentative

There are no meetings scheduled for the week of August 10, 2009.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

Additional Information

Discussion/Possible Vote on Final Rule—Update to Waste Confidence Decision (Public Meeting) tentatively scheduled for Tuesday, June 30, 2009 at 1:05 p.m., was postponed and has not been rescheduled yet.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov*.

Dated: July 2, 2009.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. E9–16207 Filed 7–6–09; 11:15 am]

BILLING CODE 7590–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Aeronautics Science and Technology Subcommittee; Committee on Technology; National Science and Technology Council

ACTION: Notice of Meeting. Public Consultation is requested regarding the biennial update to the National Plan for Aeronautics Research and Development and Related Infrastructure.

SUMMARY: The Aeronautics Science and Technology Subcommittee (ASTS) of the National Science and Technology Council's (NSTC) Committee on Technology will hold a public meeting to discuss the biennial update to the National Plan for Aeronautics Research and Development and Related Infrastructure (Plan) that is directed by Executive Order (E.O.) 13419—National Aeronautics Research and Development—signed December 20, 2006. The biennial update to the Plan will be guided by the National Aeronautics Research and Development Policy that was developed by the NSTC and endorsed by E.O. 13419.

Dates and Addresses: The meeting will be held in conjunction with the 45th AIAA/ASME/SAE/ASEE Joint Propulsion Conference & Exhibit at the Colorado Convention Center, 650 15th Street, Denver, CO 80202. The meeting

will be held on Wednesday, August 5, 2009, from 2:30 p.m. to 5 p.m. in room 401. Information regarding the 45th AIAA/ASME/SAE/ASEE Joint Propulsion Conference & Exhibit is available at the AIAA Web site: *http://www.aiaa.org.* **Note:** Persons solely attending this ASTS public meeting do not need to register for the AIAA Conference and Exhibit to attend this public meeting. There will be no admission charge for persons solely attending the public meeting. Colorado Convention Center facility information is available at the: *http://www.denverconvention.com/* Web site. Seating is limited and will be on a first come, first served basis.

FOR FURTHER INFORMATION CONTACT: Additional information and links to E.O. 13419, the National Aeronautics Research and Development Policy, the National Plan for Aeronautics Research and Development and Related Infrastructure, and the Technical Appendix—National Plan for Aeronautics Research and Development and Related Infrastructure are available by visiting the Office of Science and Technology Policy's NSTC Web site at: *http://www.ostp.gov/nstc/aeroplans* or by calling 202–456–6601.

SUPPLEMENTARY INFORMATION: E.O. 13419 and the National Aeronautics Research and Development Policy call for executive departments and agencies conducting aeronautics research and development (R&D) to engage industry, academia and other non-Federal stakeholders in support of government planning and performance of aeronautics R&D. At this meeting, ASTS members will discuss the structure and content of the Plan and receive consultation regarding the biennial update to the Plan. The desired outcome of the meeting is to obtain facts and information from individuals regarding aeronautics R&D that should be included or deleted from the national aeronautics R&D goals and objectives related to: Mobility; national security and homeland defense; aviation safety; and energy and the environment currently contained in the Plan.

M. David Hodge,

Operations Manager, OSTP.

[FR Doc. E9–16062 Filed 7–7–09; 8:45 am]

BILLING CODE 3170–W9–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28806; File No. 812–13421]

Federated Core Trust III, et al.; Notice of Application

June 30, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 22(e) of the Act and rule 22c–1 under the Act.

SUMMARY: *Summary of Application:* Applicants request an order to permit a series of a registered open-end management investment company whose outstanding securities are owned exclusively by persons who are qualified purchasers, as defined in the Act, to operate as an extended payment fund.

APPLICANTS: Federated Core Trust III (''Trust'') and Federated Investment Management Company (''Adviser'').

DATES: *Filing Dates:* The application was filed on August 31, 2007 and amended on November 15, 2007, July 21, 2008, September 8, 2008, November 21, 2008, and June 29, 2009.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 24, 2009, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: 5800 Corporate Drive, Pittsburgh, Pennsylvania 15237–7000.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 551–6812, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust was organized as a Delaware statutory trust on August 29, 2007, and filed Form N–8A on July 21, 2008. On July 22, 2008, the Trust filed Form N–1A to register its non-diversified series, Federated Project and Finance Core Fund (the ''Fund''), under the Act.

2. The Adviser, a wholly-owned subsidiary of Federated Investors, Inc., is an investment adviser registered under the Investment Advisers Act of 1940. The Adviser will serve as investment adviser to the Fund.

3. The investment objective of the Fund will be to provide total return comprised primarily from income arising out of investment in trade-finance and related securities and instruments. The Fund will invest primarily in trade, structured-trade, export and project finance or related assets of companies or other entities (including sovereign entities) located in developed markets as well as emerging markets. Applicants expect that a substantial portion of the Fund's assets will consist of a variety of trade finance securities and instruments that may not be readily sold and converted to cash within seven days. The Fund's investments, however, although less liquid than permissible for an open-end investment company in the absence of exemptive relief, will not be illiquid on a relative basis.[1] The board of trustees (''Board'') of the Fund will approve written procedures reasonably designed to ensure that the Fund's portfolio assets are sufficiently liquid so that the Fund can comply with its fundamental policy on redemptions, taking into account current market conditions and the Fund's investment objectives. The Board will review the procedures and the overall composition of the portfolio at least annually.

4. Shares of the Fund will not be registered under the Securities Act of 1933 (the ''1933 Act''); they will be offered and sold only in private

[1] At least 85% of the Fund's assets will be invested such that (a) the Fund reasonably believes that an asset can be sold or disposed of in the ordinary course of business at approximately the price used in computing the Fund's net asset value (''NAV''), in a period equal to the Fund's period for paying redemption proceeds (the period between tender and the Redemption Payment Date, as defined herein), or (b) an asset must mature before the next Redemption Payment Date.

placement transactions to ''accredited investors,'' as defined in Regulation D of the 1933 Act, that are also ''qualified purchasers,'' as defined in section 2(a)(51) of the Act and the rules thereunder (''Qualified Purchasers''). Applicants anticipate that the Fund will serve initially as a ''core fund'' that would provide access to this asset class to other registered investment companies both within and outside the Federated group of investment companies. The Fund will adopt a policy to permit the transfer of its shares only to other Qualified Purchasers.

5. Applicants have determined to register the Fund under the Act, rather than rely on section 3(c)(7) of the Act, in order to offer the Act's protections to the registered funds and other investors that will invest in the Fund. Applicants will register the Fund under the Act as an open-end, rather than as a closed-end, investment company, because the Fund's portfolio will be liquid enough to accept redemption requests daily and pay redemption proceeds within 31 days thereafter. Applicants state that a closed-end fund would not be able to offer redeemable securities and could tend to trade in the aftermarket at a discount to NAV.

6. The Fund seeks exemptions from section 22(e) of the Act and rule 22c–1 under the Act to the extent necessary to permit the Fund to operate as an extended payment fund. As such, the Fund will accept redemption requests daily, price shares tendered for redemption 24 days after receipt of the tender (the ''Redemption Pricing Date''), and pay redemption proceeds within thirty-one days after a redemption request (the ''Redemption Payment Date'').[2] Shares tendered for redemption will participate proportionately in the Fund's gains and losses during the period of time between the notice of tender for redemption and the Redemption Pricing Date.

7. The Fund will adopt a fundamental policy specifying its redemption procedures, including the timing of key redemption dates. This policy will be disclosed in the Fund's offering memorandum. Modification of this policy will require authorization by the vote of a majority of the Fund's outstanding voting securities and approval by the Commission or its staff.

Applicants' Legal Analysis

1. Rule 22c–1 under the Act generally requires a registered open-end investment company to sell, redeem, or repurchase its securities at the price based on the current NAV of such security next computed after receipt of a tender of such security for redemption.[3] Applicants state that rule 22c–1 was designed primarily to address the practice of ''backward pricing'' of fund shares. That practice involved pricing fund shares for purchase or redemption based on the NAV determined prior to the purchase or redemption request. This pricing mechanism enabled a fund's insiders to engage in ''riskless trading'' by buying shares at an NAV that they knew was likely to increase because of market action after the shares were priced. Applicants assert that, in effect, backward pricing created the possibility that some investors could trade fund shares at the expense of non-redeeming shareholders. Rule 22c–1 eliminates this problem by requiring ''forward pricing,'' or pricing fund shares at the close of the market after a purchase or redemption request is received. Under rule 22c–1, an open-end equity fund typically computes the value of shares tendered for redemption on any given day at 4 p.m. on that day.

2. Applicants propose that the Fund redeem shares at the NAV per share calculated 24 days after the shares are tendered. Applicants assert that their proposal does not raise the concern of ''backward pricing'' because shares will be priced only after a tender for redemption is received. Applicants state that the Fund's pricing timeline will be clearly disclosed and is consistent with the Act because it will treat all investors equally and not dilute non-redeeming shareholders' interests. In addition, all investors in the Fund will be Qualified Purchasers, who are capable of understanding the risks presented by the Fund's redemption policy.

3. Section 22(e) of the Act provides that a registered investment company may not suspend the right of redemption or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven days after the tender of the security to the company. Applicants request an exemption from section 22(e) to permit the Fund to pay redemption proceeds within 7 days after the Redemption Pricing Date (or 31 days after the tender of shares for redemption).

4. Applicants state that the primary purpose of section 22(e) is to address the abusive practices of early open-end companies that claimed that their securities were redeemable, only to then institute barriers to redemption. Applicants represent that the Fund's policies will not raise the possibility of such abuses. The Fund's redemption policy will be a fundamental policy changeable only by a majority vote of its shareholders and the approval of the Commission or its staff. Applicants undertake to disclose the Fund's redemption policy on the cover page of its offering memorandum and in any marketing materials, and to refrain from holding itself out as a ''mutual fund.'' Most importantly, the Fund will limit its investors to Qualified Purchasers, who are highly sophisticated investors capable of understanding the Fund's redemption policy and its associated risks.

5. In 1992, the Commission proposed rule 22e–3 under the Act that set forth an ''extended payment fund'' structure identical to that proposed for the Fund. The Commission's proposal was designed to permit a registered investment company that could both offer redeemable securities and invest in assets, including less liquid foreign securities, that did not meet the seven-day liquidity standard for traditional open-end funds.

6. Under proposed rule 22e–3, an open-end fund could make payment upon redemption of its securities up to 31 days after tender of the securities to the fund at NAV determined on the next redemption pricing date following the tender, provided that: (a) The fund did so pursuant to a fundamental policy, setting forth the number of days between a tender and the next redemption pricing and payment dates, changeable only with approval of a majority of the fund's outstanding voting securities; (b) at least 85% of the fund's assets consisted of assets that either (i) may be sold in the ordinary course of business at approximately the price used to compute the fund's NAV, within the period between the tender and the next redemption payment date, or (ii) mature by the next redemption payment date; and (c) the fund does not hold itself out to investors as a mutual fund. The Fund will comply with these requirements.

7. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the

[2] If the Redemption Pricing Date falls on a weekend or a holiday, the price of the redeemed shares will be determined as of the closing NAV of the Fund on the preceding business day.

[3] The Fund will value its securities consistent with the requirements of section 2(a)(41) of the Act. Section 2(a)(41) defines value with respect to assets of a registered investment company (a) with respect to securities for which market quotations are readily available as the market value of such securities, and (b) with respect to other securities and assets as fair value determined in good faith by the board of directors of the investment company. The Fund will calculate its NAV daily and will sell its shares at the NAV per share next calculated after a purchase request is received.

Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the Act. Applicants believe that the relief is appropriate because the Fund can provide a convenient and cost-effective means of accessing certain asset classes that provide potentially favorable returns and can produce administrative and other efficiencies and diversify risk across a number of investments. Applicants also believe that the requested relief is consistent with the protection of investors because shares of the Fund will be available only to Qualified Purchasers. Finally, applicants state that the relief is consistent with the purposes intended by the policies of the Act because, as discussed above, it does not raise the concerns addressed by section 22(e) of the Act and rule 22c–1 thereunder.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Fund's outstanding securities will be owned exclusively by persons who are Qualified Purchasers, as defined in section 2(a)(51) of the Act and the rules thereunder.

2. The Fund will adopt a fundamental policy, which may be changed only by a majority vote of the outstanding voting securities of the Fund and only upon approval by the Commission or its staff, that will specify the circumstances in which the Fund will redeem its shares, such that (a) the Fund will have a 31 day rolling deadline to pay redemptions after a shareholder has requested redemption, and (b) will calculate its NAV applicable to a redemption request on the next Redemption Pricing Date following a redemption request, which will be 24 days after a shareholder has requested redemption.

3. At least 85% of the assets of the Fund will consist of assets:

(a) That the Fund reasonably believes may be sold or disposed of in the ordinary course of business, at approximately the price used in computing the Fund's NAV, within the period between a tender of shares and the next Redemption Payment Date, or

(b) That mature by the next Redemption Payment Date.

4. The Board of the Fund, including a majority of the disinterested trustees, will adopt written procedures designed to ensure that the Fund will comply with the terms and conditions of the requested order. The Board will review these procedures at least annually and approve such changes as it deems necessary.

5. The Fund will not hold itself out as a ''mutual fund.'' The Fund will disclose its redemption policy on the cover page of its offering memorandum and in any marketing materials.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–16000 Filed 7–7–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28804; 812–13642]

WisdomTree Asset Management, Inc. and WisdomTree Trust; Notice of Application

June 29, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit funds of funds relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: WisdomTree Asset Management, Inc. (the ''Adviser'') and WisdomTree Trust (the ''Trust'').

FILING DATE: The application was filed on March 13, 2009 and amended on June 26, 2009.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 23, 2009 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, 380 Madison Avenue, 21st Floor, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Bruce MacNeil, Senior Counsel, at (202) 551–6817, or Julia Kim Gilmer, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is organized as a Delaware statutory trust and is registered under the Act as an open-end management investment company. The Adviser is organized as a Delaware corporation and is registered as an investment adviser under the Investment Advisers Act of 1940, as amended. The Adviser serves as the investment adviser to each existing series of the Trust (together with future series of the Trust, the ''Funds'').

2. Applicants request the exemption on behalf of the Trust, the Funds, and all other existing or future open-end management investment companies or series thereof advised by the Adviser or an entity controlling, controlled by, under common control with the Adviser that are registered under the Act and are in the same group of investment companies, as defined in section 12(d)(1)(G) of the Act, as the Trust (together with the Funds, the ''Applicant Funds''). The exemption would permit an Applicant Fund that may invest in other Applicant Funds in reliance on Section 12(d)(1)(G) of the Act, and that is eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act (''Fund of Funds''), to also invest, to the extent consistent with its investment objective, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').[1]

3. Consistent with its fiduciary obligations under the Act, each Fund of Funds' board of trustees or directors will review the advisory fees charged by the Fund of Funds' investment adviser to ensure that they are based on services provided that are in addition to, rather

[1] Every existing entity that currently intends to rely on the requested order is named as an applicant. Any existing or future entity that relies on the order in the future will do so only in accordance with the terms and conditions in the application. The distributor of the Funds does not intend to rely on the requested order.

than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Fund of Funds may invest.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (a) The acquiring company and acquired company are part of the same group of investment companies; (b) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (c) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (d) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that the Fund of Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Fund of Funds to invest in Other Investments. Applicants assert that permitting the Fund of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–15999 Filed 7–7–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 60203; File No. SR–NASDAQ–2009–053]

Securities Exchange Act of 1934; In the Matter of The NASDAQ Stock Market LLC

June 30, 2009.

Order of Summary Abrogation

Notice is hereby given that the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(3)(C) of the Securities Exchange Act of 1934 (''Act''),[1] is summarily abrogating a certain proposed rule change of The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'').

On June 24, 2009, NASDAQ filed SR–NASDAQ–2009–053. The proposed rule change establishes a four-month pilot program that would reduce transaction fees for members that trade equities on NASDAQ provided that they also make markets in options on the NASDAQ OMX PHLX, Inc. (''Phlx'') options exchange. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[2]

Pursuant to Section 19(b)(3)(C) of the Act,[3] at any time within 60 days of the date of filing a proposed rule change pursuant to Section 19(b)(1) of the Act,[4] the Commission may summarily abrogate the change in the rules of the self-regulatory organization and require that the proposed rule change be re-filed in accordance with the provisions of Section 19(b)(1) of the Act[5] and reviewed in accordance with Section 19(b)(2) of the Act,[6] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

NASDAQ proposes to offer a reduced transaction fee for securities listed on NASDAQ and the New York Stock Exchange LLC (''NYSE'') only to member firms that: (1) Make markets in 400 or more options classes as a Specialist, Streaming Quote Trader, or Remote Streaming Quote Trader on Phlx; and (2) add average daily volume of 35 million shares of liquidity on NASDAQ. Member firms meeting these criteria would pay a reduced transaction fee of $0.0027 per share executed on NASDAQ for securities listed on NASDAQ or NYSE. The Commission is concerned about whether the proposal is consistent with the statutory requirements applicable to a national securities exchange under the Act, including, among other provisions, Section 6(b)(4) of the Act,[7] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties

[1] 15 U.S.C. 78s(b)(3)(C).
[2] 15 U.S.C. 78s(b)(3)(A).
[3] 15 U.S.C. 78s(b)(3)(C).
[4] 15 U.S.C. 78s(b)(1).
[5] *Id.*
[6] 15 U.S.C. 78s(b)(2).
[7] 15 U.S.C. 78f(b)(4).

using its facilities; Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and Section 6(b)(8) of the Act,[9] which requires that the rules of a national securities exchange do not impose any burden on competition not necessary or appropriate in furtherance of the Act.

Accordingly, the Commission believes that the procedures provided by Section 19(b)(2) of the Act [10] will provide a more appropriate mechanism for determining whether the proposed rule change is consistent with the Act. Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to abrogate the proposed rule change.

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[11] that File No. SR–NASDAQ–2009–053, be and hereby is, summarily abrogated. If NASDAQ chooses to re-file the proposed rule change, it must do so pursuant to Sections 19(b)(1) [12] and 19(b)(2) of the Act.[13]

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–15998 Filed 7–7–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of GenX Corporation; Order of Suspension of Trading

July 2, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of GenX Corporation because of questions about the accuracy and adequacy of publicly disseminated information appearing in stock promotional materials, and elsewhere, concerning among other things the company's purported partnerships and other relationships with certain individuals and entities.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the company listed above.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above listed company is suspended for the period from 9:30 a.m. EDT on July 2, 2009, through 11:59 p.m. EDT, on July 16, 2009.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E9–16040 Filed 7–2–09; 4:15 pm]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60186; File No. SR–NASDAQ–2009–056]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of a Proposed Rule Change To Adopt Rules To Implement the Options Order Protection and Locked/Crossed Market Plan

June 29, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 2009, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt rules to implement the Options Order Protection and Locked/Crossed Market Plan (the ''Plan''), and to delete provisions which will no longer be applicable following adoption of the Plan. The text of the proposed rule change is available at *http://nasdaqomx.cchwallstreet.com/,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 7, 2008, NASDAQ filed an executed copy of the Options Order Protection and Locked/Crossed Market Plan (''Plan''), joining all other approved options markets in proposing the Plan. The Plan requires each options exchange to adopt rules implementing various requirements specified in the Plan. This proposal is designed to fulfill that obligation.

Background

The Plan will replace the current Plan for the Purpose of Creating and Operating an lntermarket Option Linkage (''Linkage Plan''). That plan requires its participant exchanges to operate a stand-alone system or ''Linkage'' for sending order-flow between exchanges to limit trade-throughs. The Options Clearing Corporation (''OCC [sic]) operates the Linkage system (the ''System''). The Linkage rules provide for unique types of Linkage orders, with a complicated set of requirements as to who may send such orders and under what conditions. Before a market maker can trade through another exchange's quote, it first must send a Linkage order and then wait three seconds for a response.

While the Linkage largely has operated satisfactorily, it is under significant strain. When the Commission approved the Linkage Plan in 2000, average daily volume (''ADV'') in the options market was approximately 2.6 million contracts across all exchanges. Now the ADV has increased four-fold to more than 10.8 million contracts, putting added strain on the ability of market makers to comply with the complex Linkage rules. At the same time, the options markets have been moving towards quoting in pennies. This greatly increases the number of price changes in an option, giving rise to greater chances of trade-throughs and missing markets as market makers send Linkage orders and have to wait three seconds for a response.

Based upon experience in the equities markets following the adoption of Regulation NMS in 2005, the options exchanges have determined to replace

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(8).

[10] *Id.*

[11] 15 U.S.C. 78s(b)(3)(C).

[12] 15 U.S.C. 78s(b)(1).

[13] 15 U.S.C. 78s(b)(2).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the System with the Plan providing for a set of rules and procedures designed to avoid trade-throughs and locked markets. The key to Regulation NMS's price-protection provisions is the Intermarket Sweep Order, or ISO. Each equity exchange must adopt rules ''reasonably designed to prevent trade-throughs.'' Exempted from trade-through liability is an ISO, which is an order a member sends to an exchange displaying a price inferior to the national best bid and offer (''NBBO''), while simultaneously sending orders to trade against the full size of any other exchange that is displaying the NBBO. A simple prohibition against most trade-throughs, coupled with the ISO mechanism, has given the equities markets a straight-forward system to provide customers with price protection in a fast-moving, high-volume market that is quoted in pennies.

The Proposed New Definitions. The proposed Plan incorporates a number of defined terms, some identical to definitions from the existing Linkage Plan and others that have been developed along with the proposed Plan itself. Accordingly, NASDAQ is proposing to adopt new Chapter XII, Section 1 which sets forth the defined terms for use under the proposed Plan.

The Proposed Trade-Through Rule. The Plan essentially would apply the Regulation NMS price-protection provisions to the options markets. Similar to Regulation NMS, the Plan would require participants to adopt rules ''reasonably designed to prevent Trade-Throughs,'' while exempting ISOs from that prohibition.

Accordingly, Nasdaq is proposing to adopt new Chapter XII, Section 2 which codifies the requirement that Nasdaq and other Plan participants avoid trading through superior prices on other markets. Nasdaq is also proposing to add an ISO order in Chapter VI, Section 1(e)(7) based upon the ISO order that Nasdaq currently uses for compliance with Regulation NMS when trading equities. The ISO order will be exempt from the prohibition against trading throughs. In addition, Nasdaq proposes to add several additional exceptions to the trade-through prohibition that track the exceptions under Regulation NMS or correspond to unique aspects of the options market,'' [sic] or both. Specifically:

• *System Issues:* Section 2(b)(1) of the NOM Rules tracks Section 5(b)(i) of the Plan which corresponds to the system-failure exception in Regulation NMS [3] for equity securities and permits trading through an Eligible Exchange that is experiencing system problems.

• *Trading Rotations:* Section 2(b)(2) of the NOM Rules tracks Section 5(b)(ii) of the Plan which carries forward the current Trade-Through exception in the Old Plan [4] and is the options equivalent to the single price opening exception in Regulation NMS for equity securities.[5] Some Options exchanges (other than NOM) use a trading rotation to open an option for trading, or to reopen an option after a trading halt. The rotation is effectively a single price auction to price the option and there are no practical means to include prices on other exchanges in that auction.

• *Crossed Markets:* Section 2(b)(3) of the NOM Rules tracks Section 5(b)(iii) of the Plan which corresponds to the crossed quote exception in Regulation NMS for equity securities.[6] If a Protected Bid is higher than a Protected Offer, it indicates that there is some form of market dislocation or inaccurate quoting. Permitting transactions to be executed without regard to Trade-Throughs in a Crossed Market will allow the market to quickly return to equilibrium.

• *Intermarket Sweep Orders (''ISOs''):* These two exceptions correspond to the ISO exceptions in Regulation NMS for equity securities.[7] Section 2(b)(4) of the NOM Rules tracks Section 5(b)(iv) of the Plan which permits a Participant to execute orders it receives from other Participants or members that are marked as ISO even when it is not at the NBBO. Section 2(b)(5) of the NOM Rules tracks Section 5(b)(v) of the Plan which allows a Participant to execute inbound orders when it is not at the NBBO, provided it simultaneously ''sweeps'' all better-priced interest displayed by Eligible Exchanges.

• *Quote Flickering:* Section 2(b)(6) of the NOM Rules tracks Section 5(b)(vi) of the Plan which corresponds to the flickering quote exception in Regulation NMS for equity securities.[8] Options quotations change as rapidly, if not more rapidly, than equity quotations. Indeed, they track the price of the underlying security and thus change when the price of the underlying security changes. This exception provides a form of ''safe harbor'' to market participants to allow them to trade through prices that have changed within a second of the transaction causing a nominal Trade-Through.

• *Non-Firm Quotes:* Section 2(b)(7) of the NOM Rules tracks Section 5(b)(vii) of the Plan which carries forward the current non-firm quote Trade-Through exception in the Old Plan.[9] By definition, an Eligible Exchange's quotations may not be firm for automatic execution during this trading state and thus should not be protected from Trade-Throughs. In effect, these quotations are akin to ''manual quotations'' under Regulation NMS.

• *Complex Trades:* Section 2(b)(8) of the NOM Rules tracks Section 5(b)(viii) of the Plan which carries forward the current complex trade exception in the Old Plan [10] and will be implemented through rules adopted by the Participants and approved by the Commission. Complex trades consist of multiple transactions (''legs'') effected at a net price, and it is not practical to price each leg at a price that does not constitute a Trade-Through. Narrowly-crafted implementing rules will ensure that this exception does not undercut Trade-Through protections.

• *Customer Stopped Orders:* Section 2(b)(9) of the NOM Rules tracks Section 5(b)(ix) of the Plan which corresponds to the customer stopped order exception in Regulation NMS for equity securities.[11] It permits broker dealers to execute large orders over time at a price agreed upon by a customer, even though the price of the option may change before the order is executed in its entirety.[12]

• *Stopped Orders and Price Improvement:* Section 2(b)(10) of the NOM Rules tracks Section 5(b)(xi) of the Plan which would apply if an order is stopped at price that did not constitute a Trade-Through at the time of the stop. In this case, an exchange could seek price improvement for that order, even if the market moves in the interim, and the transaction ultimately is effected at a price that would trade through the then currently-displayed market.

• *Benchmark Trades:* Section 2(b)(11) of the NOM Rules tracks Section 5(b)(xii) of the Plan which would cover trades executed at a price not tied to the price of an option at the time of execution, and for which the material terms were not reasonably determinable at the time of the commitment to make the trade. An example would be a volume-weighted average price trade, or

[3] *See* Rule 611(b)(1) under the Exchange Act.

[4] *See* Linkage Plan Section 8(c)(iii)(E).

[5] *See* Rule 611(b)(3) under the Exchange Act.

[6] *See* Rule 611(b)(4) under the Exchange Act.

[7] *See* Rule 611(b)(5) and (6) under the Exchange Act.

[8] *See* Rule 611(b)(8) under the Exchange Act.

[9] *See* Linkage Plan Section 8(c)(iii)(C).

[10] *See* Linkage Plan Section 8(c)(iii)(G).

[11] *See* Rule 611(b)(9) under the Exchange Act.

[12] For a further discussion on how this exemption operates, *see* Regulation NMS Adopting Release, Exchange Act Release No. 51808 (June 9, 2005) at notes 322–325.

''VWAP.'' This corresponds to a Trade-Through exemption in Regulation NMS for equity trades.[13] NOM does not currently permit these types of options trades, and any transaction-type relying on this exemption would require NOM to adopt implementing rules, subject to Commission review and approval.

The Proposed Locked and Crossed Markets Rule. Similar to Regulation NMS, the Plan requires its participants to adopt, maintain and enforce rules requiring members: To avoid displaying locked and crossed markets; to reconcile such markets; and to prohibit members from engaging in a pattern or practice of displaying locked and crossed markets. These provisions are subject to exceptions that are contained in the rules of each participant and that are to be approved by the Commission.

Accordingly, NASDAQ has proposed to adopt Chapter XII, Section 3 of the NOM rules which would set forth the general prohibition against locking/crossing other eligible exchanges as well as several exceptions that the Plan participants approved that permit locked markets in limited circumstances. Specifically, the exceptions to the general prohibition on locking and crossing occur when (1) the locking or crossing quotation was displayed at a time when the Exchange was experiencing a failure, material delay, or malfunction of its systems or equipment; (2) the locking or crossing quotation was displayed at a time when there is a Crossed Market; or (3) the Member simultaneously routed an ISO to execute against the full displayed size of any locked or crossed Protected Bid or Protected Offer.

NOM Routing Arrangements. NASDAQ is proposing to rely upon the order routing arrangements already in place on its market

Proposed Temporary Linkage Rule. NASDAQ also proposes to adopt Chapter XII, Section 4 which provides that the Exchange will continue to accept Principal Acting as Agent (''P/A'') and Principal Orders from options exchanges that continue to use such orders to address trade-throughs. [sic] via the existing linkage for a temporary period. NASDAQ is also proposing to modify Chapter VII, Section 5 to clarify the obligations of market makers to honor all trades routed pursuant to proposed Chapter XII of the NOM rules, regardless of whether it is routed via the Linkage or through a private linkage arrangement.

Miscellaneous. NASDAQ is making several miscellaneous minor changes to its rules in connection with the new Plan. Specifically, NASDAQ is proposing modifications to Chapter IV, Section 5 to remove unnecessary references to the existing Linkage Plan, and also to Chapter 7, Section 5 to remove references to ''P/A'' orders and also to the existing Linkage Plan.

Fees. The Exchange is proposing no changes to the fees applicable to orders routed by NOM to away markets. The fee is the same whether the order is routed to NOM from an away market via the linkage or via a private routing arrangement. NASDAQ is retaining references to the current Linkage in NASDAQ Rule 7050(1) to assess fees for orders sent to NASDAQ via the Linkage during the temporary period.

Implementation. NASDAQ proposes to implement this proposed rule change upon withdrawal from the current Linkage Plan and effectiveness of the new Plan. Implementation is currently scheduled for August 31, 2009.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[14] in general, and with Sections 6(b)(5) of the Act,[15] in particular. The proposal is consistent with Section 6(b)(5) in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes that adopting rules that implement the Plan will facilitate the trading of options in a national market system by establishing more efficient protection against trade-throughs and locked and crossed markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2009–056 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–056. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

[13] *See* Rule 611(b)(7) under the Exchange Act.

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4), (5).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–056 and should be submitted on or before July 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–15991 Filed 7–7–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60191; File No. SR–NYSEArca–2009–58]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending NYSE Arca Equities Rule 7.31

June 30, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 24, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. NYSE Arca filed the proposed rule change as a ''non-controversial'' proposal pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.31. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule filing is to add Self-Trade Prevention (''STP'') modifiers to NYSE Arca Equities Rule 7.31. The proposed STP modifiers are designed to prevent two orders with the same ETP ID from executing against each other. The Exchange proposes adding four STP modifiers that will be implemented and made available at the Equity Trading Permit ID (''ETP ID'') level.[6] The STP modifiers will not be automatically implemented across all ETP ID's, but rather ETP Holders must elect to designate each order with one of the STP modifiers. The STP modifier on the incoming order controls the interaction between two orders marked with STP modifiers. The four new STP modifiers are discussed more thoroughly below.

STP Cancel Newest (''STPN'')

An incoming order marked with the STPN modifier will not execute against opposite side resting interest marked with any of the STP modifiers from the same ETP ID. The incoming order marked with the STPN modifier will be cancelled back to the originating ETP Holder. The resting order marked with one of the STP modifiers, which otherwise would have interacted with the incoming order by the same ETP Holder, will remain on the NYSE Arca Book.

STPN Example 1: An order to buy 500 shares @ $22.00 is marked with any of the four STP modifiers and becomes a resting order in the NYSE Arca Book. Subsequently, an order to sell 500 shares @ $22.00 is entered with the same ETP ID and marked with the STPN modifier.

STPN Result 1: The incoming sell order for 500 shares @ $22.00 marked with the STPN modifier is cancelled back to the originating ETP Holder. The resting buy order for 500 shares at $22.00 marked one of the four STP modifiers remains on the NYSE Arca Book.

STPN Example 2: An order to buy 500 shares @ $22.00 is marked with any of the four STP modifiers and becomes a resting order in the NYSE Arca Book. Subsequently, an order to sell 700 shares @ $22.00 is entered with the same ETP ID and marked with the STPN modifier.

STPN Result 2: The incoming sell order for 700 shares @ $22.00 marked with the STPN modifier is cancelled back to the originating ETP Holder. The resting buy order for 500 shares at $22.00 marked one of the four STP modifiers remains on the NYSE Arca Book.

STPN Example 3: An order to buy 500 shares @ $22.00 is marked with any of the four STP modifiers and becomes a resting order in the NYSE Arca Book. Subsequently, an order to sell 400 shares @ $22.00 is entered with the same ETP ID and marked with the STPN modifier.

STPN Result 3: The incoming sell order for 400 shares @ $22.00 marked with the STPN modifier is cancelled back to the originating ETP Holder. The resting buy order for 500 shares at $22.00 marked one of the four STP modifiers remains on the NYSE Arca Book.

STP Cancel Oldest (''STPO'')

An incoming order marked with the STPO modifier will not execute against opposite side resting interest marked with any of the STP modifiers from the same ETP ID. The resting order marked with any of the STP modifiers, which otherwise would have interacted with the incoming order by the same ETP Holder, will be cancelled back to the originating ETP Holder. The incoming order marked with the STPO modifier will remain on the NYSE Arca Book.

STPO Example 1: An order to buy 500 shares @ $22.00 is marked with any of the four STP modifiers and becomes a resting order in the NYSE Arca Book. Subsequently, an order to sell 500 shares @ $22.00 is entered with the same ETP ID and marked with the STPO modifier.

STPO Result 1: The resting buy order for 500 shares at $22.00 marked with one of the four STP modifiers is cancelled back to the originating ETP Holder. The incoming sell order for 500 shares @ $22.00 marked with the STPO modifier is entered in the NYSE Arca Book.

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] Each ETP Holder is assigned an ETP ID which is used as a firm identifier within Exchange systems.

STPO Example 2: An order to buy 500 shares @ $22.00 is marked with any of the four STP modifiers and becomes a resting order in the NYSE Arca Book. Subsequently, an order to sell 700 shares @ $22.00 is entered with the same ETP ID and marked with the STPO modifier.

STPO Result 2: The resting buy order for 500 shares at $22.00 marked with one of the four STP modifiers is cancelled back to the originating ETP Holder. The incoming sell order for 700 shares @ $22.00 marked with the STPO modifier is entered on the NYSE Arca Book.

STPO Example 3: An order to buy 500 shares @ $22.00 is marked with any of the four STP modifiers and becomes a resting order in the NYSE Arca Book. Subsequently, an order to sell 400 shares @ $22.00 is entered with the same ETP ID and marked with the STPO modifier.

STPO Result 3: The resting buy order for 500 shares at $22.00 marked with one of the four STP modifiers is cancelled back to the originating ETP Holder. The incoming sell order for 400 shares @ $22.00 marked with the STPN modifier entered on the NYSE Arca Book.

STP Decrement and Cancel (''STPD'')

An incoming order marked with the STPD modifier will not execute against opposite side resting interest marked with any of the STP modifiers from the same ETP ID. If both orders are equivalent in size, both orders will be cancelled back to the originating ETP Holders. If the orders are not equivalent in size, the equivalent size will be cancelled back to the originating ETP Holders and the larger order will be decremented by the size of the smaller order with the balance remaining on the NYSE Arca Book.

STPD Example 1: An order to buy 500 shares @ $22.00 is marked with any of the four STP modifiers and becomes a resting order in the NYSE Arca Book. Subsequently, an order to sell 500 shares @ $22.00 is entered with the same ETP ID and marked with the STPD modifier.

STPD Result 1: The resting buy order for 500 shares at $22.00 marked with one of the four STP modifiers is cancelled back to the originating ETP Holder. The incoming sell order for 500 shares @ $22.00 marked with the STPD modifier is cancelled back to the originating ETP Holder.

STPD Example 2: An order to buy 500 shares @ $22.00 is marked with any of the four STP modifiers and becomes a resting order in the NYSE Arca Book. Subsequently, an order to sell 700 shares @ $22.00 is entered with the same ETP ID and marked with the STPD modifier.

STPD Result 2: The resting buy order for 500 shares at $22.00 marked with one of the four STP modifiers is cancelled back to the originating ETP Holder. The equivalent portion, 500 shares, of the incoming sell order marked with the STPD modifier is cancelled back to the originating ETP Holder. The remaining portion, 200 shares, is entered on the NYSE Arca Book.

STPD Example 3: An order to buy 500 shares @ $22.00 is marked with any of the four STP modifiers and becomes a resting order in the NYSE Arca Book. Subsequently, an order to sell 400 shares @ $22.00 is entered with the same ETP ID and marked with the STPD modifier.

STPD Result 3: 400 of the 500 shares on the resting buy order at $22.00 marked with one of the four STP modifiers is cancelled back to the originating ETP Holder. The outstanding 100 shares remain on the NYSE Arca Book. The incoming sell order for 400 shares @ $22.00 marked with the STPD modifier is cancelled back to the originating ETP Holder.

STP Cancel Both (''STPC'')

An incoming order marked with the STPC modifier will not execute against opposite side resting interest marked with any of the STP modifiers from the same ETP ID. The entire size of both orders will be cancelled back to originating ETP Holder.

STPC Example 1: An order to buy 500 shares @ $22.00 is marked with any of the four STP modifiers and becomes a resting order in the NYSE Arca Book. Subsequently, an order to sell 500 shares @ $22.00 is entered with the same ETP ID and marked with the STPC modifier.

STPC Result 1: The resting buy order for 500 shares at $22.00 marked with one of the four STP modifiers is cancelled back to the originating ETP Holder. The incoming sell order for 500 shares @ $22.00 marked with the STPC modifier is cancelled back to the originating ETP Holder.

STPC Example 2: An order to buy 500 shares @ $22.00 is marked with any of the four STP modifiers and becomes a resting order in the NYSE Arca Book. Subsequently, an order to sell 700 shares @ $22.00 is entered with the same ETP ID and marked with the STPC modifier.

STPC Result 2: The resting buy order for 500 shares at $22.00 marked with one of the four STP modifiers is cancelled back to the originating ETP Holder. The incoming order to sell 700 shares @ $22.00 marked with the STPC modifier is cancelled back to the originating ETP Holder.

STPC Example 3: An order to buy 500 shares @ $22.00 is marked with any of the four STP modifiers and becomes a resting order in the NYSE Arca Book. Subsequently, an order to sell 400 shares @ $22.00 is entered with the same ETP ID and marked with the STPC modifier.

STPC Result 3: The resting buy order for 500 shares at $22.00 marked with one of the four STP modifiers is cancelled back to the originating ETP Holder. The incoming order to sell 400 shares @ $22.00 marked with the STPC modifier is cancelled back to the originating ETP Holder.

STP modifiers are intended to prevent interaction between the same ETP ID. STP modifiers must be present on both the buy and the sell order in order to prevent a trade from occurring and to effect a cancel instruction. STP modifiers are available for orders entered in either an agency or principal capacity. An incoming STP order cannot cancel through resting orders that have price and/or time priority. When an order with an STP modifier is entered it will first interact will all available interest in accordance with the Order Ranking and Display process pursuant to Exchange Rule 7.36. If there is a remaining balance on the order after trading with all orders with higher priority, it may then interact with an opposite side STP order in accordance with the rules established above. In situations where there are multiple STP orders resting in the NYSE Arca Book, an incoming STP order interacts only with the first resting STP order that it encounters. Incoming STP orders that are priced through the price of a resting STP order may cancel the resting order as long as no other non-STP orders have priority. Additionally, orders marked with one of the STP modifiers will not be prevented from interacting during any Auction process as defined by Rule 7.35.

The Exchange believes that adding this functionality will allow firms to better manage order flow and prevent undesirable executions with themselves or the potential for (or the appearance of) ''wash sales'' that may occur as a result of the velocity of trading in today's high speed marketplace. Commonly ETP Holders have multiple connections into the Exchange due to capacity and speed related demands. Orders routed by the same ETP Holder via different connections may, in certain circumstances, trade against each other. The new STP modifiers provide ETP Holders the opportunity to prevent these potentially undesirable trades occurring under the same ETP ID on both the buy and sell side of the execution. The Exchange also believes that this functionality will allow firms to better internalize agency order flow which in turn may decrease the costs to its customers. The Exchange notes that the STP modifiers do not alleviate, or otherwise exempt, broker-dealers from their best execution obligations. As such, broker-dealers using the STP modifiers will be obligated to internally cross agency orders at the same price, or a better price than they would have received had the orders been executed on the Exchange. Additionally, the STP modifiers will assist market participants in complying with certain rules and regulations of the Employee Retirement Income Security Act (''ERISA'') that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts. Finally, the Exchange

notes that offering the STP modifiers will streamline certain regulatory functions by reducing false positive results that may occur on Exchange generated wash trading surveillance reports when orders are executed under the same ETP ID. For these reasons, the Exchange believes the STP modifiers offer users enhanced order processing functionality that may prevent potentially undesirable executions without negatively impacting broker dealer best execution obligations.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the ''Exchange Act''), in general, and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. This functionality will allow firms to better manage order flow and prevent undesirable executions against themselves.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b-4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the benefits of this functionality to NYSE Arca market participants expected from the rule change will not be delayed. The Commission believes that waiving the 30-day operative delay to make this functionality available without delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2009–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca-2009–58. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–58 and should be submitted on or before July 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–15993 Filed 7–7–09; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60197; File No. SR–NYSE–2009–62]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending the Moratorium Related to the Qualification and Registration of Registered Competitive Market Makers Pursuant to NYSE Rule 107A and Competitive Traders Pursuant to NYSE Rule 110 to the Earlier of the Approval of SR–NYSE–2009–08 or July 24, 2009

June 30, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 26, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the moratorium related to the qualification and registration of Registered Competitive Market Makers (''RCMMs'') pursuant to NYSE Rule 107A and Competitive Traders (''CTs'') pursuant to NYSE Rule 110 to the earlier of the approval of SR–NYSE–2009–08 or July 24, 2009. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The New York Stock Exchange LLC (''Exchange'' or ''NYSE'') proposes to extend the moratorium related to the qualification and registration of Registered Competitive Market Makers (''RCMMs'') pursuant to NYSE Rule 107A and Competitive Traders (''CTs'') pursuant to NYSE Rule 110 to the earlier of the approval of SR–NYSE–2009–08[4] or July 24, 2009.

On September 22, 2005, the Exchange filed SR–NYSE–2005–63[5] with the Securities and Exchange Commission (''Commission'') proposing to implement a moratorium on the qualification and registration of new RCMMS and CTs (''Moratorium'').[6] The Moratorium allowed the Exchange to review the viability of RCMMs and CTs in the Exchange's evolving more electronic market.

During the Moratorium, the Exchange reviewed the quarterly volume data of RCMM and CT trading data to determine the average trading volume of RCMMs.

As a result of its review, the Exchange concluded that RCMMs and CTs no longer serve as viable supplemental market makers. Accordingly, the Exchange determined that RCMMs and CTs should no longer be viable classes of traders on the Exchange. On April 10, 2009, the Exchange filed a separate proposed rule change, SR–NYSE–2009–08 (''2009–08'') with the Commission to eliminate RCMMs and CTs as viable classes of NYSE traders.[7]

The Exchange proposes to extend the Moratorium as amended[8] to the earlier of the approval of proposed rule change 2009–08 or July 24, 2009 to allow 2009–08 to complete the rule filing process pursuant to Rule 19b–4.[9]

The Exchange will issue an Information Memo announcing the extension of the Moratorium.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the instant filing is consistent with these principles. Based on its review of data associated with RCMM and CT trading, the Exchange has concluded that RCMMs and CTs no longer serve as viable supplemental market makers. In this instant filing, the Exchange seeks an extension of the Moratorium to complete the 19b–4 rule filing process following its proposed rule filing to eliminate RCMMs and CTs as viable classes of NYSE traders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] See Securities Exchange Act Release No. 59746 (April 10, 2009), 74 FR 17702 (April 16, 2009) (SR–NYSE–2009–08).

[5] See Securities Exchange Act Release No. 52648 (October 21, 2005), 70 FR 62155 (October 28, 2005) (SR–NYSE–2005–63).

[6] See Securities Exchange Act Release Numbers 54140 (July 13, 2006), 71 FR 41491 (July 21, 2006) (SR–NYSE–2006–48); 54985 (December 21, 2006), 72 FR 171 (January 3, 2007) (SR–NYSE–2006–113); 55992 (June 29, 2007), 72 FR 37289 (July 9, 2007) (SR–NYSE–2007–57); 56556 (September 27, 2007), 72 FR 56421 (October 3, 2007) (SR–NYSE–2007–86); 57072 (December 31, 2007), 73 FR 1252 (January 7, 2008) (SR–NYSE–2007–125); 57601 (April 2, 2008), 73 FR 19123 (April 8, 2008) (SR–NYSE–2008–22); 58033 (June 26, 2008), 73 FR 38265 (July 3, 2008) (SR–NYSE–2008–49); 58713 (October 2, 2008), 73 FR 59024 (October 8, 2008) (SR–NYSE–2008–96); 59069 (December 8, 2008); 73 FR 76081 (December 15, 2008) (SR–NYSE–2008–124); 59551 (March 10, 2009), 74 FR 11624 (March 18, 2009) (SR–NYSE–2009–24), 60062 (June 8, 2009), 74 FR 28297 (June 15, 2009) (SR–NYSE–2009–53).

[7] See Securities Exchange Act Release No. 59746 (April 10, 2009), 74 FR 17702 (April 16, 2009) (SR–NYSE–2009–08).

[8] See Securities Exchange Act Release No. 53549 (March 24, 2006), 71 FR 16388 (March 31, 2006) (SR–NYSE–2006–11) (making certain amendments to the Moratorium).

[9] 17 CFR 240.19b–4.

[10] 15 U.S.C. 78s(b)(3)(A).

thereunder [11] because the foregoing proposed rule: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[12]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [13] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NYSE has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Moratorium to continue without interruption while awaiting the completion of the rule filing process with respect to SR–NYSE–2009–08. Therefore, the Commission designates that the proposed rule change become operative immediately.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2009–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–62 and should be submitted on or before July 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–15994 Filed 7–7–09; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 240.19b–4(f)(6).

[12] In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60187; File No. SR–CBOE–2009–040]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Regarding a New Options Market Linkage Structure

June 29, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 24, 2009, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The filing proposes to adopt certain new order handling rules in connection with a new options industry linkage structure. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This filing proposes to adopt rules to facilitate the Exchange's transition to a new intermarket linkage structure. Since

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

2000, the Exchange has been a participant in the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the ''Old Plan''). That plan achieved intermarket order protection via a spoke-and-hub connectivity structure between options exchanges. The Options Clearing Corporation acted as the hub and provided connectivity between exchanges. This connectivity, which did not require the transmission of orders to an exchange through a member of that exchange, allowed for the sending of three order types: P/A orders (which are for the principal account of a market-maker on behalf of a non-broker-dealer customer), P Orders (orders for the proprietary account of a market-maker), and Satisfaction Orders (orders reflecting the terms of a non-broker-dealer customer order resting on an exchange that was traded-through by another market).

The Participants of the Old Plan have established a new plan to provide a more modern framework for options market order protection and locked/crossed markets. The new plan is called the Options Order Protection and Locked/Crossed Market Plan (the ''Plan'' or ''New Plan''). The New Plan does not route orders through a hub. Instead it requires Participants to access better-priced quotations on another market through a member of that market and via the transmission of a new order-type: The Intermarket Sweep Order (''ISO''). The New Plan's order protection provisions are modeled after Regulation NMS Rule 611.

As described below, this filing adopts rules that correspond to the order protection provisions of the New Plan (these rules will generally be uniform with the rules of the other Participants). It also modifies certain Exchange order handling rules to facilitate implementation of the New Plan.

New Plan Rules

The filing proposes to eliminate all of the language in the rules relating to the Old Plan (Rules 6.80 through 6.85) and replace that language with rules mirroring the terms of the New Plan. The new Section E of Chapter 6 would contain a rule providing applicable definitions (Rule 6.80), a rule governing order protection (Rule 6.81), a rule governing locked and crossed markets (Rule 6.82), and a temporary rule regarding the transition from the Old Plan framework to the New Plan (Rule 6.83).

Revised Rule 6.81 provides that members shall not effect trade-throughs. It also lists the various exceptions to trade-through liability. These are: (1) If an Eligible Exchange repeatedly fails to respond within one second to incoming orders attempting to access its Protected Quotations (provided certain notification, assessment, and documentation requirements are met); (2) a transaction effected during a trading rotation; (3) a transaction during a Crossed Market; (4) the execution of an order identified as an ISO, or an execution effected on the Exchange while it simultaneously routs an ISO to execute against the full displayed size of any better-priced Protected Quotation; (5) the Eligible Exchange displaying the Protected Quotation that was traded through had displayed, within one second prior to execution of the Trade-Through, a Best bid or Best offer, as applicable, for the options series with a price that was equal or inferior to the price of the Trade-Through transaction; (6) the Protected Quotation traded through was being disseminated from an Eligible Exchange whose Quotations were Non-Firm with respect to such options series; (7) the execution of a Complex Trade; (8) the execution of an order for which, at the time of receipt of the order, a Member had guaranteed an execution at no worse than a specified price, where (i) the stopped order was for the account of a Customer, (ii) the Customer agreed to the specified price on an order-by-order basis, and (iii) the price of the Trade-Through was, for a stopped buy (sell) order, lower (higher) than the national Best Bid (Offer) in the options series at the time of execution; (9) the execution of an order that was stopped at a price that did not Trade-Through an Eligible Exchange at the time of the stop; and (10) the execution of an order at a price that was not based, directly or indirectly, on the quoted price of the options series at the time of execution and for which the material terms were not reasonably determinable at the time the commitment to execute the order was made.

Proposed Rule 6.82 provides that members shall reasonably avoid (and shall not engage in a pattern of) locking and crossing Protected Quotations. The Rule contains the following exceptions: (1) The locking or crossing quotation was displayed at a time when the Exchange was experiencing a failure, material delay, or malfunction of its systems or equipment; (2) The locking or crossing quotation was displayed at a time when there is a Crossed Market; (3) The Member simultaneously routed an ISO to execute against the full displayed size of any locked or crossed Protected Bid or Protected Offer; and (4) The locking quotation is permissible pursuant to Rules 6.45A(d) and 6.45B(d).[3]

Temporary Rule 6.83 provides that during the transition to the New Plan, the Exchange will continue to receive and execute (and may send) P/A and P orders if the Exchange is the NBBO. Once all Participants have completely migrated to the New Plan structure, this Rule would cease to be necessary. In connection with the transition, CBOE intends to access other Participants via the use of P/A and P orders on a temporary basis pursuant to exemptive relief we are requesting from the Commission until the Exchange's roll-out of the new functionality is complete (once ISO outbound routing is available for a class, the Exchange will cease using P and P/A orders as well as ''old'' HAL functionality for that class). The Exchange anticipates that the migration to the New Plan functionality will take several weeks. The Exchange will keep members informed of the rollout schedule via circular and will identify on a class-by-class basis which classes are trading pursuant to the temporary rule and utilizing ''old'' HAL as well as which classes are trading pursuant to the ''new'' linkage rules and HAL2.

HAL2

The Exchange proposes to adopt a new Hybrid Agency Liaison System (''HAL2'') in proposed Rule 6.14A. The Exchange will determine the eligible order size, eligible order type, eligible order origin code (*i.e.,* public customer orders, non-Market Maker broker-dealer orders, and Market Maker broker-dealer orders), and classes for HAL2.[4] When the Exchange receives a qualifying order that is marketable against the NBBO and/or the Exchange's BBO,[5] HAL2 will ''flash'' the order at the NBBO price to allow CBOE Market-Makers appointed in that class as well as all members acting as agent for orders at the top of the Exchange's book in the relevant series (and other members if allowed by the Exchange) to step-up to the NBBO price. The duration of the flash period shall not exceed 1 second. The first responder to indicate an interest to trade at the NBBO price will trade against the flashed order up to the size of the response (the flash period will continue

[3] CBOE Rules 6.45A(d) and 6.45B(d) allow the Exchange to temporarily disseminate a lock between Exchange Market-Makers. This lock is firm for all buy and sell orders.

[4] As classes migrate to the New Plan on CBOE, the Exchange will be able to utilize HAL2 for those classes (*i.e.* HAL2 will only be available for classes trading pursuant to the New Plan).

[5] Unless the Exchange's quotation contains resting orders and does not contain sufficient Market-Maker quotation interest to satisfy the entire order.

for any unexecuted balance). Responders will also be allowed to respond at prices worse than the NBBO but equal to or better than the Exchange's BBO. At the end of the response period (if no responders have matched the NBBO price or if there is a remainder on the flashed order) the HAL2 system will ascertain the best available price(s) between all pending responses and the best disseminated prices on other exchanges, and then execute the flashed order at the best price(s) by trading it against flash responses first and transmitting ISOs to other exchanges second.

For example, CBOE's best offer is 1.22 for 200 contracts, and the NBBO is 1.19 for 10 contracts with one other market disseminating a 1.20 offer for 20 contracts. An order to buy 100 contracts at 1.22 is received. The order will be flashed at 1.19. Market-Maker A immediately submits a response to trade 10 contracts at 1.19. As a result 10 contracts trade against Market-Maker A at 1.19 (leaving 90 contracts on the order). During the remaining flash period Market-Maker B submits a response to trade 20 contracts at 1.21. As soon as the flash period concludes (assuming the away market prices have not changed), the system will simultaneously: Route an ISO to buy 10 contracts at 1.19 to the NBBO market, route an ISO to buy 20 contracts at 1.20 to the market displaying the 1.20 offer, execute 20 at 1.21 against Market-Maker B, and execute the remaining 40 against the Exchange's 1.22 offer using the matching algorithm in effect for the class.

If any portion of an order that is routed away returns unfilled, the Exchange will deem it a ''new'' order for processing purposes and trade it against the best bid/offer on the Exchange unless another exchange is quoting a better price in which case the Exchange will attempt to access such better price with a new ISO order. Any executions at the Exchange's best bid/offer will be handled in two batches: First against all interest resting at that price at the time the flashed order was received, and second against any interest that joined at that price after the flash process commenced (in both cases the matching algorithm in effect for that class will be used). The Exchange also notes that order senders can bypass HAL2 processing by submitting Immediate or Cancel Orders.

Paragraph (d) of proposed Rule 6.14A lists the circumstances in which a flash period would terminate early. Those are: (1) If the Exchange receives an unrelated order on the same side of the market as the flashed order that is priced equal to or better than the flashed order; (2) if, in the case of an exposed order that is marketable against the Exchange's BBO, Market-Maker interest at the BBO decrements to a size that would be equal to or smaller than the size of the exposed order; and (3) if an unrelated order or quote on the opposite side of the market from the exposed order is received that could trade against the exposed order at the prevailing NBBO or better in which case the orders would trade at the NBBO unless the unrelated order is a customer order in which case the orders would trade at the midpoint of the unrelated order's limit price and the NBBO (*e.g.* the NBBO/flash price for a buy order is 1.15, during the exposure period a customer limit order to sell at 1.13 is received, the orders will be matched to the greatest extent possible at 1.14 providing price improvement to both orders).[6]

Lastly, Interpretation and Policy .01 to Rule 6.14A provides that the Exchange will limit redistribution of exposed order messages to third parties. Essentially, the purpose of this provision is to provide the Exchange with flexibility to restrict members from passing on or redistributing flash messages to others. Of course, the provisions of Exchange Rule 4.1 (Just and Equitable Principles of Trade) and 4.18 (Prevention of the Misuse of Material, Nonpublic Information) apply to all HAL2 trading.

Price Check Parameter

A new price check parameter is also being adopted in connection with the new HAL2 process (this new parameter is in Rule 6.13(vi)). For classes in which HAL2 is activated, the Exchange will not automatically execute orders that are marketable if the NBBO width is not within an acceptable price range established by the Exchange (APR), or if an execution would follow an initial partial execution and occur at a price that is not within an acceptable tick distance from the initial execution as established by the Exchange (ATD). If an execution is suspended because of the APR, the order will route to PAR for handling. If an execution is suspended because of the ATD, the order will be exposed pursuant to the HAL2 process using the ATD as the exposure price. If a quantity remains after the HAL2 process, the balance will route to PAR (in this regard, the HAL2 processing for these orders is different that normal HAL2 processing). The Exchange notes that users may bypass this processing by submitting orders with an immediate or cancel designation.

New Order Routing Rule

The Exchange proposes to adopt new Rule 6.14B which would govern the Exchange's process for routing sweep orders to other markets. The Exchange intends to contract with one or more routing brokers that are not affiliated with the Exchange to route sweep orders to other exchanges. Any such contract will restrict the use of any confidential and proprietary information that the routing broker receives to legitimate business purposes necessary for routing orders at the direction of the Exchange. Routing services would be available to members only and are optional. Members that do not want orders routed can use the Immediate or Cancel designation to avoid routing.

The rule also provides that (1) the Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the routing broker, and any other entity, including any affiliate of the routing broker, and, if the routing broker or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the routing services; (2) the Exchange may not use a routing broker for which the Exchange or any affiliate of the Exchange is the designated examining authority; (3) the Exchange will provide its Routing Services in compliance with the provisions of the Act and the rules thereunder, including, but not limited to, the requirements in Section 6(b)(4) and (5) of the Act that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; (4) the Exchange will determine the logic that provides when, how, and where orders are routed away to other exchanges; (5) the routing broker cannot change the terms of an order or the routing instructions, nor does the routing broker have any discretion about where to route an order; and, (6) any bid or offer entered on the Exchange routed to another exchange via a routing broker that results in an execution shall be

[6] If the unrelated order was smaller than the exposed order, then the flash would continue for the unexecuted balance of the exposed order.

binding on the member that entered such bid/offer.

New Order Types

The filing proposes to adopt several new order types that would be added to Rule 6.53: (1) *AIM Sweep Order.* An AIM sweep order (AIM ISO) is the transmission of two orders for crossing pursuant to Rule 6.74A without regard for better priced Protected Bids/Offers because the member transmitting the AIM ISO to the Exchange has, simultaneously with the routing of the AIM ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid/Offer that is superior to the starting AIM auction price and has swept all interest in the Exchange's book priced better than the proposed auction starting price (with any execution(s) resulting from such sweeps shall accrue to the AIM Agency Order); (2) *Sweep and AIM Order.* A sweep and AIM order is the transmission of two orders for crossing pursuant to Rule 6.74A with an auction starting price that does not need to be within the Exchange's best bid and offer and where the Exchange will ''sweep'' all Protected Bids/Offers by routing one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid/Offer that is superior to the starting AIM auction price, as well as sweep all interest in the Exchange's book priced better than the proposed auction starting price concurrent with the commencement of the AIM auction with any execution(s) resulting from such sweeps accruing to the AIM Agency Order; and, (3) *CBOE-Only Order.* A CBOE-only order is an order to buy or sell that is to be executed in whole or in part on the Exchange without routing the order to another market center and that is to be cancelled if routing would be required under the Exchange's Rules.

Other Changes

In connection with the new linkage structure and the adoption of the rules described above, the Exchange is also making minor changes to other Exchange rules including adding reference to HAL2 to Rule 6.2B, eliminating The ''Removal of Unreliable Quotes'' provision of Rule 6.13, eliminating references in the Exchanges crossing mechanisms (6.74A and 6.74B) to the block trade exemption of the Old Plan, and deletion of Rule 8.52 relating to the now defunct Pilot Program for Away Market Maker Access.

Implementation

The Exchange represents that the proposed rules will not become operative until the Exchange has withdrawn from the Old Plan.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(5) of the Act[8] in particular in that, by making the linkage process more efficient and offering users greater control over order routing, it is designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system. Moreover, the Exchange believes that adopting rules that implement the Plan will facilitate the trading of options in a national market system by establishing more efficient protection against trade-throughs.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2009–040 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–040. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–040 and should be submitted on or before July 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–15992 Filed 7–7–09; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60199; File No. SR–FINRA–2009–042]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Outside Business Activities of Registered Persons

June 30, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 8, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt NASD Rule 3030 (Outside Business Activities of an Associated Person) as FINRA Rule 3270 (Outside Business Activities of Registered Persons) in the consolidated FINRA rulebook with moderate changes. The proposed rule change would delete Incorporated NYSE Rule 346 (Limitations—Employment and Association with Members and Member Organizations) and its interpretations. The proposed rule change would require registered persons to give notice to member firms prior to engaging in an outside business activity (as defined therein).

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] FINRA is proposing to adopt NASD Rule 3030 (Outside Business Activities of an Associated Person) as FINRA Rule 3270 (Outside Business Activities of Registered Persons) in the Consolidated FINRA Rulebook with moderate changes. The proposed rule change would delete NYSE Rule 346[4] (Limitations—Employment and Association with Members and Member Organizations) and its interpretations. However, as further described below, the proposed rule change would incorporate certain provisions of NYSE Rule 346 into new FINRA Rule 3270.

(1) Proposed FINRA Rule 3270 (Outside Business Activities of Registered Persons)

Proposed FINRA Rule 3270 would prohibit any registered person from being an employee, independent contractor, sole proprietor, officer, director or partner of another person, or being compensated, or having the reasonable expectation of compensation, from another person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member. The proposed rule change would expand the obligations imposed under NASD Rule 3030, which prohibits any registered person from being employed by or accepting any compensation from any person as a result of any outside business activity, other than passive investment, unless he has provided prompt written notice to his member firm. In contrast, NYSE Rule 346(b) generally prohibits any member (as defined in the NYSE rules) or employee of a member organization from being engaged in any other business, or being employed or compensated by any other person, or serving as an officer, director, partner or employee of another business organization or owning any stock or having any direct or indirect financial interest in any other organization engaged in any securities, financial or kindred business unless such person has made a written request to, and received prior written consent from, his or her member organization employer.

The primary difference between the existing NASD and NYSE rules is the timing of the required notice and the requirement in the NYSE rule for a member's prior written consent. With respect to timing, FINRA believes that registered persons should not be permitted to engage in outside business activities without the firm's prior knowledge. Potential investor harm could ensue in the interim period between the time the registered person commences an outside business activity and the time a firm receives ''prompt'' written notice. Also, because the term ''prompt'' is susceptible to differing interpretations, adopting a prior written notice standard in this context would promote consistency within the securities industry, though FINRA understands that, in practice, many firms already require prior written notice. Further, a prior written notice standard would allow a firm an opportunity to determine whether the proposed outside business activity is properly being characterized by the registered representative as an outside business activity, or whether it is an outside securities activity, subject to NASD Rule 3040 (Private Securities Transactions of an Associated Person).[5]

For these reasons, FINRA proposes that FINRA Rule 3270 require prior written notice whenever a registered representative will be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or will be compensated, or have the reasonable expectation of compensation, from any other person as a result of any outside business activity.

With respect to the requirement in NYSE Rule 346(b) for prior written consent, FINRA believes that requiring prior written consent for outside business activities is unnecessary. To the extent that these activities may

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The new FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] For convenience, the proposed rule change refers to Incorporated NYSE Rules as NYSE Rules.

[5] FINRA is proposing to replace NASD Rule 3040 with new provisions in proposed FINRA Rule 3110(b)(3), as part of the consolidated FINRA rules addressing supervision and supervisory controls. *See* FINRA *Regulatory Notice* 08–24 (May 2008).

nevertheless raise investor protection concerns and adversely impact the individual's business within the firm, the proposed rule change has supplementary material, drawn in part from procedures required in NYSE Rule 346(e), that sets forth the obligations of a member upon receipt of a written notice of a proposed outside business activity. FINRA believes that firms must review the registered person's participation in the outside activity to determine whether it raises investor protection concerns. Specifically, the supplementary material states that a member must make a determination as to whether the proposed activity raises investor protection concerns, and if so, the firm must implement procedures or restrictions on the activity to protect investors, or prohibit the activity. A member also must evaluate the proposed activity to determine whether the activity properly is characterized as an outside business activity or whether it should be treated as an outside securities activity subject to the requirements of NASD Rule 3040.[6]

The proposed rule change also harmonizes and simplifies the standards for what constitutes an outside business activity. Currently, the NASD and NYSE rules have a number of overlapping provisions. NYSE Rule 346(b) generally requires, subject to certain exceptions, written notice whenever a member or employee of a member organization is employed or compensated by any other person; serves as an officer, director, partner or employee of another organization; or owns any stock or has, directly or indirectly, any financial interest in any other organization engaged in any securities, financial or kindred business. NASD Rule 3030 generally requires notice whenever a registered person is employed by or accepts any compensation from any person as a result of any outside business activity, other than passive investment. In reconciling these two standards, the proposed rule change requires prior written notice whenever a registered representative will be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or will be compensated, or have the reasonable expectation of compensation, from any other person as a result of any outside business activity. The inclusion of the phrase ''or have the reasonable expectation of compensation'' addresses situations in which an outside activity does not immediately yield compensation (*e.g.,* where a registered person intends to work for a start-up business). FINRA believes that a registered person should not be able to engage in an activity in which he or she reasonably expects to be compensated without providing the firm with prior written notice, and FINRA believes that a rule dependent on the prior receipt of compensation is too narrow and may be susceptible to abuse. Proposed Rule 3270 retains the exemptions in NASD Rule 3030 for ''passive investments'' and activities subject to the requirements of NASD Rule 3040.[7]

In addition, the proposed rule would streamline the text by replacing the phrase ''person associated with a member in any registered capacity'' with ''registered person'' and would re-title the rule ''Outside Business Activities of Registered Persons'' to better reflect its application to registered persons.

(2) Deleted Provisions of Incorporated NYSE Rule 346 and Its Supplementary Material and Interpretations

FINRA proposes to delete other provisions of NYSE Rule 346 that are unnecessary and/or duplicative of provisions in the federal securities laws or the FINRA Rulebook and delete NYSE Rule Interpretations that are unnecessary or inconsistent with Proposed Rule 3270.

NYSE Rule 346(a) and related NYSE Interpretation 346/01 require natural persons not associated with entities that are registered broker-dealers to register with the SEC unless specifically exempted by the Exchange Act. FINRA proposes to delete these provisions as redundant in light of Section 15(a) of the Exchange Act.[8]

NYSE Rule 346(c) provides that where a member organization approves an employee's participation in a private securities transaction in which regard the employee has or may receive selling compensation, the transaction shall be recorded on the books and records of the member organization, which shall supervise such participation as if the transaction were executed on its behalf. FINRA proposes to delete this provision as redundant of NASD Rule 3040 (Private Securities Transactions of an Associated Person).[9]

NYSE Rule 346(d) provides that no member shall qualify more than one member organization for membership. This provision is inconsistent with FINRA's approach to membership, which allows the same individual to qualify more than one firm for membership, as appropriate. FINRA examines separately the merits of each membership application and proposes to delete the prohibition in the NYSE rule.

NYSE Rule 346(e) requires every employee of a member organization who is assigned or delegated any responsibility or authority pursuant to NYSE Rule 342 to devote his entire time during business hours to the business of such member organization unless an alternative arrangement has been approved in writing by the member organization. FINRA believes that the existing and proposed rules on supervision and outside business activities adequately ensure that the member firm's business is not adversely affected by outside activities. Moreover, associated persons in the independent broker-dealer channel at times devote substantial time to non-member business and this provision would create unnecessary administrative burdens if applied to them. Accordingly, FINRA proposes to delete this provision.

NYSE 346(f) provides that unless otherwise permitted by the Exchange, no member, member organization, approved person, employee or any person directly or indirectly controlling, controlled by or under common control with a member or member organization shall have associated with him or it any person who is known, or in the exercise of reasonable care should be known, to be subject to any ''statutory disqualification'' defined in Section 3(a)(39) of the Exchange Act.[10] In connection with FINRA's consolidation transaction, FINRA amended its definition of disqualification in its By-Laws to align with the Exchange Act definition, thereby incorporating additional categories of statutory disqualification, including certain affiliated relationships.[11] Accordingly, FINRA proposes to delete NYSE Rule 346(f) as redundant.[12]

Finally, FINRA proposes to delete NYSE Rule Interpretations 346/02 and/03, which address personal business expenses and factors to consider when

[6] FINRA is proposing to replace NASD Rule 3040 with new provisions in proposed FINRA Rule 3110(b)(3), as part of the consolidated FINRA rules addressing supervision and supervisory controls. *See* FINRA *Regulatory Notice* 08–24 (May 2008).

[7] FINRA is separately considering NASD Rule 3050 (Transactions for or by Associated Persons) as part of the rulebook consolidation process and will consider whether transactions subject to NASD Rule 3050, as proposed to be amended, also should be exempted from proposed FINRA Rule 3270.

[8] 15 U.S.C. 78*o*–3.

[9] *See supra* note 5.

[10] 15 U.S.C. 78c(a)(39).

[11] For further discussion, *see* Securities Exchange Act Release No. 59586 (March 17, 2009), 74 FR 12166 (March 23, 2009) (Order Approving SR–FINRA–2008–045).

[12] This was confirmed in a conversation with Gary Goldshelle of FINRA on June 29, 2009.

approving outside activities, FINRA believes the Interpretations are unnecessary or inconsistent with proposed FINRA Rule 3270. In particular, the provisions in NYSE Rule Interpretation 346/02 requiring a firm to assume responsibility for all activities effected on its behalf and under its name are addressed by other FINRA rules, including supervision rules. In addition, FINRA has chosen not to impose a requirement for firms to approve all advertisements of an outside business, although a firm may impose such restrictions as part of its obligations under supplementary material .01. FINRA requires firms to approve all advertisements for member firm business, even if an advertisement relates to the firm's non-securities business; however, FINRA does not believe that approval should be required for outside business activities permitted under the proposed rule change.

For the reasons noted above, FINRA proposes to transfer NASD Rule 3030 into the Consolidated FINRA Rulebook with the changes described herein. In addition, FINRA proposes to delete NYSE Rule 346 and its interpretations from the Transitional Rulebook also as described herein.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[13] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change will clarify and streamline NASD Rule 3030 for adoption as a FINRA rule in the new Consolidated FINRA Rulebook, while also implementing additional protections such as the need for registered persons to provide prior written notice to its member firms of proposed outside business activities and for firms to determine whether the proposed activities raise investor protection concerns.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2009–042 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–042. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–042 and should be submitted on or before July 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–15996 Filed 7–7–09; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60201; File No. SR–NASDAQ–2009–062]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Extend the Pilot Program for NASDAQ Last Sale Data Feeds

June 30, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 26, 2009, the NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

[1] 15 U.S.C. 78*s*(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing to extend for three months the pilot that created the NASDAQ Last Sale (''NLS'') market data products. NLS allows data distributors to have access to real-time market data for a capped fee, enabling those distributors to provide free access to the data to millions of individual investors via the internet and television. Specifically, NASDAQ offers the ''NASDAQ Last Sale for NASDAQ'' and ''NASDAQ Last Sale for NYSE/Amex'' data feeds containing last sale activity in U.S. equities within the NASDAQ Market Center and reported to the jointly operated FINRA/NASDAQ Trade Reporting Facility (''FINRA/NASDAQ TRF''). The purpose of this proposal is to extend the existing pilot program for three months.[3]

This pilot program supports the aspiration of Regulation NMS to increase the availability of proprietary data by allowing market forces to determine the amount of proprietary market data information that is made available to the public and at what price. During the current pilot period, the program has vastly increased the availability of NASDAQ proprietary market data to individual investors. Based upon data from NLS distributors, Nasdaq believes that since its launch in July 2008, the NLS data has been viewed by over 50,000,000 investors on Web sites operated by Google, Interactive Data, and Dow Jones, among others.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.[4]

* * * * *

7039. NASDAQ Last Sale Data Feeds

(a) For a three-month pilot period commencing on [April] *July* 1, 2009, NASDAQ shall offer two proprietary data feeds containing real-time last sale information for trades executed on NASDAQ or reported to the NASDAQ/FINRA Trade Reporting Facility.

(1) ''NASDAQ Last Sale for NASDAQ'' shall contain all transaction reports for NASDAQ-listed stocks; and

(2) ''NASDAQ Last Sale for NYSE/Amex'' shall contain all such transaction reports for NYSE- and Amex-listed stocks.

(b) Each distributor of the NASDAQ Last Sale Data Feeds may elect between two alternate fee schedules, depending upon the choice of distributors to report usage based on either a username/password entitlement system or a quote counting mechanism or both. All fees for the NASDAQ Last Sale Data Products are ''stair-stepped'' in that the fees are reduced for distributors with more users but the lower rates apply only to users in excess of the specified thresholds rather than applying to all users once a threshold is met. In addition, there shall be a maximum fee of $50,000 per month for NASDAQ Last Sale for NASDAQ and NASDAQ Last Sale for NYSE/Amex.

(1) Firms that choose to report usage for either a username/password entitlement system or quote counting mechanism or both shall elect between paying a fee for each user or a fee for each query. A firm that elects to pay for each query may cap its payment at the monthly rate per user. Firms shall pay the following fees:

(A) NASDAQ Last Sale for NASDAQ

Users/mo	Price	Query	Price
1–9,999	$0.60/usermonth	0–10M	$0.003/query.
10,000–49,999	$0.48/usermonth	10M–20M	$0.0024/query.
50,000–99,999	$0.36/usermonth	20M–30M	$0.0018/query.
100,000+	$0.30/usermonth	30M+	$0.0015/query.

(B) NASDAQ Last Sale for NYSE/Amex

Users/mo	Price	Query	Price
1–9,999	$0.30/usermonth	0–10M	$0.0015/query.
10,000–49,999	$0.24/usermonth	10M–20M	$0.0012/query.
50,000–99,999	$0.18/usermonth	20M–30M	$0.0009/query.
100,000+	$0.15/usermonth	30M+	$0.000725/query.

(2) Firms that choose not to report usage based on either a username/password entitlement system or quote counting mechanism or both may distribute NASDAQ Last Sale Data Products under alternate fee schedules depending upon whether they distribute data via the Internet or via Television:

(A) The fee for distribution of NASDAQ Last Sale Data Products via the Internet shall be based upon the number of Unique Visitors to a website receiving such data. The number of Unique Visitors shall be validated by a vendor approved by NASDAQ in NASDAQ's sole discretion.

(i) NASDAQ Last Sale for NASDAQ

Unique visitors	Monthly fee
1–100,000	$0.036/Unique Visitor.
100,000–1M	$0.03/Unique Visitor.
1M+	$0.024/Unique Visitor.

(ii) NASDAQ Last Sale for NYSE/Amex

Unique visitors	Monthly fee
1–100,000	$0.018/Unique Visitor.
100,000–1M	$0.015/Unique Visitor.
1M+	$0.012/Unique Visitor.

(B) Distribution of NASDAQ Last Sale Data Products via Television shall be based upon the number of Households receiving such data. The number of Households to which such data is available shall be validated by a vendor approved by NASDAQ in NASDAQ's sole discretion.

(i) NASDAQ Last Sale for NASDAQ

Households	Monthly fee
1–1M	$0.0096/Household.
1M–5M	$0.0084/Household.
5M–10M	$0.0072/Household.

[3] Nasdaq will file a proposed rule change within thirty days seeking permanent approval oft [sic] the Nasdaq Last Sale pilot.

[4] Changes are marked to the rule text that appears in the electronic NASDAQ Manual found at *http://nasdaqomx.cchwallstreet.com.*

Households	Monthly fee
10M+	$0.006/Household.

(ii) NASDAQ Last Sale for NYSE/Amex

Households	Monthly fee
1–1M	$0.0048/Household.
1M–5M	$0.0042/Household.
5M–10M	$0.0036/Household.
10M+	$0.003/Household.

(C) A Distributor that distributes NASDAQ Last Sale Data Products via multiple distribution mechanisms shall pay all fees applicable to each distribution mechanism, provided that there shall be a discount from the applicable Television rate as follows:

(i) 10 percent reduction in applicable Television fees when a Distributor reaches the second tier of Users, Queries, or Unique Visitors for its non-Television users;

(ii) 15 percent reduction in applicable Television fees when a Distributor reaches the third tier of Users, Queries, or Unique Visitors for its non-Television users; and

(iii) 20 percent reduction in applicable Television fees when a Distributor reaches the fourth tier of Users, Queries, or Unique Visitors for its non-Television users.

(c) All Distributors of a NASDAQ Last Sale Data Feed shall also pay a monthly fee of $1,500.

II. *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*

Prior to the launch of NLS, public investors that wished to view market data to monitor their portfolios generally had two choices: (1) Pay for real-time market data or (2) use free data that is 15 to 20 minutes delayed. To increase consumer choice, NASDAQ proposed a pilot to offer access to real-time market data to data distributors for a capped fee, enabling those distributors to disseminate the data via the Internet and television at no cost to millions of Internet users and television viewers. NASDAQ now proposes a three-month extension of that pilot program on the same terms as applicable today.

The NLS pilot created two separate ''Level 1'' products containing last sale activity within the NASDAQ market and reported to the jointly-operated FINRA/NASDAQ TRF. First, the ''NASDAQ Last Sale for NASDAQ Data Product,'' a real-time data feed that provides real-time last sale information including execution price, volume, and time for executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. Second, the NASDAQ Last Sale for NYSE/Amex data product that provides real-time last sale information including execution price, volume, and time for NYSE- and Amex-securities executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF.

NASDAQ established two different pricing models, one for clients that are able to maintain username/password entitlement systems and/or quote counting mechanisms to account for usage, and a second for those that are not. Firms with the ability to maintain username/password entitlement systems and/or quote counting mechanisms will be eligible for a specified fee schedule for the NASDAQ Last Sale for NASDAQ Product and a separate fee schedule for the NASDAQ Last Sale for NYSE/Amex Product: Firms that were unable to maintain username/password entitlement systems and/or quote counting mechanisms will also have multiple options for purchasing the NASDAQ Last Sale data. These firms chose between a ''Unique Visitor'' model for Internet delivery or a ''Household'' model for television delivery. Unique Visitor and Household populations must be reported monthly and must be validated by a third-party vendor or ratings agency approved by NASDAQ at NASDAQ's sole discretion. In addition, to reflect the growing confluence between these media outlets, NASDAQ offered a reduction in fees when a single distributor distributes NASDAQ Last Sale Data Products via multiple distribution mechanisms.

Second, NASDAQ established a cap on the monthly fee, currently set of $50,000 per month for all NASDAQ Last Sale products. The fee cap enables NASDAQ to compete effectively against other exchanges that also offer last sale data for purchase or at no charge.

Finally, as with the distribution of other NASDAQ proprietary products, all distributors of the NASDAQ Last Sale for NASDAQ and/or NASDAQ Last Sale for NYSE/Amex products would pay a single $1,500/month NASDAQ Last Sale Distributor Fee in addition to any applicable usage fees. The $1,500 monthly fee will apply to all distributors and will not vary based on whether the distributor distributes the data internally or externally or distributes the data via both the Internet and television.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general and with Section 6(b)(4) of the Act,[6] as stated above, in that it provides an equitable allocation of reasonable fees among users and recipients of NASDAQ data. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The NASDAQ Last Sale market data products proposed here appear to be precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[7]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f–3(b)(4).

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

NASDAQ's ability to price its Last Sale Data Products is constrained by (1) competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and free delayed consolidated data; and (3) the inherent contestability of the market for proprietary last sale data.

The market for proprietary last sale data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including eleven self-regulatory organization (''SRO'') markets, as well as broker-dealers (''BDs'') and aggregators such as the DirectEdge electronic communications network (''ECN''). Each SRO market competes to produce transaction reports via trade executions, and an ever-increasing number of FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, and ECNs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ECN and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, Amex, NYSEArca, and BATS.

Any ECN or BD can combine with any other ECN, broker-dealer, or multiple ECNs or BDs to produce jointly proprietary data products. Additionally, non-broker-dealers such as order routers like LAVA, as well as market data vendors, can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ECNs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace writ large.

Consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is widely available in real time at $1 per month for non-professional users. Second, consolidated data is also available at no cost with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only that data which will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to successfully market proprietary data products.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, and BATS Trading. Today, BATS publishes its data at no charge on its website in order to attract order flow, and it uses market data revenue rebates from the resulting executions to maintain low execution charges for its users.

Several ECNs have existed profitably for many years with a minimal share of trading, including Bloomberg Tradebook and NexTrade.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, Reuters and Thomson. New entrants are already on the horizon, including ''Project BOAT,'' a consortium of financial institutions that is assembling a cooperative trade collection facility in Europe. These institutions are active in the United States and could rapidly and profitably export the Project BOAT technology to exploit the opportunities offered by Regulation NMS.

In establishing the price for the NASDAQ Last Sale Products, NASDAQ considered the competitiveness of the market for last sale data and all of the implications of that competition. NASDAQ believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish a fair, reasonable, and not unreasonably discriminatory fee and an equitable allocation of fees among all users.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, the NASDAQ Last Sale

Products respond to and enhance competition that already exists in the market.

On May 28, 2008, the Internet portal Yahoo! announced that it would offer its Web site viewers real-time last sale data provided by BATS Trading. NASDAQ's last sale data products would compete directly with the BATS product disseminated via Yahoo!. Since that time, BATS has attracted additional purchasers of its last sale product that is free of charge or, at least, has not been the subject of a proposed rule change * * * [sic]

In addition, as set forth above, the market for last sale data is already competitive, with both real-time and delayed consolidated data as well as the ability for innumerable entities to begin rapidly and inexpensively to offer competitive last sale data products. Moreover, the New York Stock Exchange distributes competing last sale data products and has reduced the price of its product. Under the deregulatory regime of Regulation NMS, there is no limit to the number of competing products that can be developed quickly and at low cost. The Commission should not stand in the way of enhanced competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Three comment letters were filed regarding the proposed rule change as originally published for comment. NASDAQ responded to these comments in a letter dated December 13, 2007. Both the comment letters and NASDAQ's response are available on the SEC Web site at *http://www.sec.gov/comments/sr-nasdaq-2006-060/nasdaq2006060.shtml*.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2009–062 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–062. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–062 and should be submitted on or before July 29, 2009.

IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

The Commission finds that the proposed rule change, to extend the pilot program for three months, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, it is consistent with Section 6(b)(4) of the Act,[9] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,[11] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,[12] adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.[13]

The Commission approved the fee for the NASDAQ Last Sale Data Feeds for a pilot period which runs until June 30, 2009.[14] The Commission notes that the Exchange proposes to extend the pilot program for three months. The Commission did not receive any comments on the previous extensions of the pilot program.[15]

On December 2, 2008, the Commission issued an approval order (''Order'') that sets forth a market-based approach for analyzing proposals by self-regulatory organizations to impose fees for ''non-core'' market data products, such as the NASDAQ Last Sale Data Feeds.[16] The Commission believes that Nasdaq's proposal to temporarily extend the pilot program is consistent with the Act for the reasons noted in the Order.[17] The Commission believes that approving NASDAQ's proposal to temporarily extend the pilot

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(8).

[12] 17 CFR 242.603(a).

[13] NASDAQ is an exclusive processor of its last sale data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes data on an exclusive basis on its own behalf.

[14] *See* Securities Exchange Act Release Nos. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR–NASDAQ–2006–060); 58894 (October 31, 2008), 73 FR 66953 (November 12, 2008) (SR–NASDAQ–2008–086); 59186 (December 30, 2008), 74 FR 743 (January 7, 2009) (SR–NASDAQ–2008–103); and 59652 (March 31, 2009) 74 FR 15533 (April 6, 2009) (SR–NASDAQ–2009–027).

[15] *Id.*

[16] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (Order Setting Aside Action by Delegated Authority and Approving Proposed Rule Change Relating to NYSE Arca Data).

[17] *See supra* note 14.

program that imposes a fee for the NASDAQ Last Sale Data Feeds for an additional three months will be beneficial to investors and in the public interest, in that it is intended to allow continued broad public dissemination of increased real-time pricing information. In addition, extending the pilot program for an additional three months will allow NASDAQ, consistent with its representation, to file within 30 days, the public to comment on, and the Commission to analyze consistent with the Order and in light of Section 19(b) of the Act, a proposal to permanently approve the fee for NASDAQ Last Sale Data Feeds.[18]

The Commission finds good cause for approving the proposed rule change before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Accelerating approval of this proposal is expected to benefit investors by continuing to facilitate their access to widespread, free, real-time pricing information contained in the NASDAQ Last Sale Data Feeds. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[19] to approve the proposed rule change on an accelerated basis to extend the operation of the pilot until September 30, 2009.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASDAQ–2009–062) is hereby approved on an accelerated basis until September 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Elizabeth M. Murphy.

Secretary.

[FR Doc. E9–16002 Filed 7–7–09; 8:45 am]

BILLING CODE 8010–01–P

[18] The Exchange has represented that it will file a proposed rule change within thirty days of filing of this proposal seeking permanent approval of the NASDAQ Last Sale Data Feeds pilot program. *See supra* note 3.

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60202; File No. SR–Phlx–2009–54)]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Fees for the Top of PHLX Options (''TOPO'') Data Feed

June 30, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on June 30, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fee schedule by establishing subscriber fees for a direct data product related to the trading of standardized options on the Exchange's enhanced electronic trading platform for options, Phlx XL II.[3] Specifically, the Exchange is proposing to adopt fees for the Top of Phlx Options (''TOPO''), a direct data feed product that features the Exchange's best bid and offer position, with aggregate size and last sale information on the Phlx XL II system.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 5, 2009, the Exchange launched the Phlx XL II system, which is subject to a symbol-by-symbol rollout schedule expected to last up to 12 weeks. In conjunction with the launch and rollout of the Phlx XL II system, the Exchange is developing TOPO. TOPO will provide to subscribers a direct data feed that includes the Exchange's best bid and offer position, with aggregate size, based on displayable order and quoting interest on the Phlx XL II system. The data contained in the TOPO data feed is identical to the data sent to the processor for the Options Price Regulatory Authority (''OPRA''), and the TOPO and OPRA data leave the Phlx XL II System at the same time.

Currently, the Exchange does not make market data products such as TOPO available. Accordingly, there are no current fees for distribution or use of these products on the Exchange's fee schedule. In coordination with the projected completion of the rollout of the Phlx XL II system, the Exchange proposes to charge monthly fees to distributors, beginning August 1, 2009, for use of TOPO. The monthly ''Distributor Fee'' charged will depend on whether the distributor is an ''Internal Distributor'' or an ''External Distributor,'' as defined below.

Under the proposal, the Exchange's fee schedule will reflect that a ''distributor'' of NASDAQ OMX PHLX data is any entity that receives a feed or data file of data directly from NASDAQ OMX PHLX or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity), and that all distributors would be required to execute a NASDAQ OMX PHLX distributor agreement.[4]

Internal Distributor

An Internal Distributor is an organization that subscribes to the Exchange for the use of TOPO, and is permitted by agreement with the Exchange to provide TOPO data to internal users (*i.e.,* users within their

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[4] The Exchange notes that the proposed definition of ''distributor'' and references to internal and external distribution are identical to those set forth in NASDAQ Rule 7019(c).

own organization). Internal Distributors would be charged a monthly fee of $2,000 per organization.

External Distributor

An External Distributor is an organization that subscribes to the Exchange for the use of TOPO, and is permitted by agreement with the Exchange to provide TOPO data to both internal users and to external users (*i.e.,* users outside of their own organization). External Distributors will be charged a monthly fee of $2,500 per organization.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general and with Section 6(b)(4) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Phlx operates or controls.

The Exchange believes that the proposed rule change is also consistent with the provisions of Section 6(b)(5) of the Act,[7] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange.

The Exchange believes that the proposed rule change is also consistent with Section 6(b)(8) of the Act [8] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as set forth in more detail below.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The Commission has recently issued an order firmly establishing that in reviewing non-core data products such as TOPO, the Commission will utilize a market-based approach that relies primarily on competitive forces to determine the terms on which non-core data is made available to investors.[9] The Commission adopted a two-part test:

> The first is to ask whether the exchange was subject to significant competitive forces in setting the terms of its proposal for non-core data, including the level of any fees. If an exchange was subject to significant competitive forces in setting the terms of a proposal, the Commission will approve the proposal unless it determines that there is a substantial countervailing basis to find that the terms nevertheless fail to meet an applicable requirement of the Exchange Act or the rules thereunder. If, however, the exchange was not subject to significant competitive forces in setting the terms of a proposal for non-core data, the Commission will require the exchange to provide a substantial basis, other than competitive forces, in its proposed rule change demonstrating that the terms of the proposal are equitable, fair, reasonable, and not unreasonably discriminatory.[10]

This standard begins from the premise that no Commission rule requires exchanges or market participants either to distribute non-core data to the public or to display non-core data to investors.[11]

In its NetCoalition Order the Commission concluded that ''at least two broad types of significant competitive forces applied to NYSE Arca in setting the terms of its Proposal to distribute the ArcaBook data: (1) NYSE Arca's compelling need to attract order flow from market participants; and (2) the availability to market participants of alternatives to purchasing the ArcaBook data. The Commission conducted an exhaustive 14-page review of these two competitive forces before concluding that the availability of alternatives, as well as the compelling need to attract order flow, imposed significant competitive pressure on the exchange's need to act equitably, fairly, and reasonably in setting the terms of the fees for its non-core data product.[12]

The market data provided in TOPO is non-core data that is governed by the same analysis the Commission set forth in the NetCoalition Order. As with the NYSE Arca depth-of-book product, no rule requires Phlx or any other exchange to offer top of book data; nor are vendors required to purchase or display that data. Additionally, Phlx is constrained by the same two competitive forces in the options market as the Commission found are present in the proposal of the International Securities Exchange, Inc. (''ISE'') to establish fees for a real-time depth of market data offering, the ISE Depth of Market Data Feed (''Depth of Market'').[13]

First, Phlx has a compelling need to attract order flow from market participants, just as ISE, in order to maintain its share of trading volume. This compelling need to attract order flow imposes significant pressure on Phlx to act reasonably in setting its fees for Phlx market data, particularly given that the market participants that will pay such fees often will be the same market participants from whom Phlx must attract order flow. These market participants include broker-dealers that control the handling of a large volume of customer and proprietary order flow. Given the portability of order flow from one exchange to another, any exchange that sought to charge unreasonably high data fees would risk alienating many of the same customers on whose orders it depends for competitive survival.

As an illustration of the intensity of the competition for options order flow among the seven U.S. options exchanges, the ISE and Chicago Board Options Exchange, Inc. (''CBOE'') each enjoy close to thirty percent market share of volume, followed by Phlx at close to twenty percent market share, followed by four other exchanges with meaningful market share.

Phlx currently trades options on 7 proprietary index products that are not traded on any other exchange. These 7 options currently represent less than 0.04% of Phlx's total contract volume. Given the small percentage of Phlx's total contract volume represented by these 7 products, the Exchange believes that the inclusion of data on these products in the TOPO product should not confer market power on Phlx to compel market participants to purchase the entire Phlx data feed. The Exchange therefore believes that the inclusion of top-of-book data for these products in Phlx's TOPO product does not undermine the fact that Phlx is subject

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(8).

[9] Securities Exchange Act Release No. 57917 [*sic*] (Dec. 2, 2008) (NetCoalition Order'' resolving File No. SR–NYSEArca–2006–21).

[10] *Id.* at 48–49.

[11] *Id.* at 4.

[12] *Id.* at 51–65. The Commission then spent an additional 36 pages (65–101) analyzing and refuting comments challenging the Commission's competition analysis.

[13] *See* Securities Exchange Act Release No. 59949 (May 20, 2009), 74 FR 25593 (May 28, 2009) (SR–ISE–2007–97) (Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to Market Data Fees).

to significant competitive forces in setting the terms of its proposal.

Second, Phlx is constrained in pricing TOPO by the availability to market participants of alternatives to purchasing TOPO. Phlx must consider the extent to which market participants would choose one or more alternatives instead of purchasing the exchange's data. For example, although the TOPO data feed is separate from the core data feed made available by OPRA, all the information available in TOPO is included in the core data feed. The core OPRA data is widely distributed and relatively inexpensive, thus constraining Phlx's ability to price TOPO. Additionally, both ISE and CBOE are potential competitors because each exchange enjoys greater market share and thus the ability to offer a top-of-book product that would compete favorably with TOPO.

If the Commission finds that Phlx is subject to significant competitive forces in setting the terms of TOPO pricing, then the Commission should approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. Phlx submits that no such countervailing basis exists.

To the contrary, Phlx's considerations in setting the fees for TOPO are virtually identical to those the Commission approved in the NetCoaltion Order. First, the proposed fees for TOPO are lower for Internal Distributors than for External Distributors. Because Internal Distributors are by definition more limited in the scope of their distribution of TOPO data than External Distributors, it is reasonable to expect that Internal Distributors will provide TOPO data to a smaller number of internal subscribers. Conversely, External Distributors can reasonably be expected to distribute the TOPO data to a higher number of subscribers because they do not have the same limitation. Accordingly, the Exchange will charge a higher fee to External Distributors than to Internal Distributors. The fees therefore do not unreasonably discriminate among types of subscribers, such as by favoring participants in the Phlx market or penalizing participants in other markets. Second, Phlx projects that the total revenues generated by the TOPO fee initially will amount to less than the $8 million per year that NYSE Arca projected would be generated by its ArcaBook data.[14]

[14] *Id.* at 101–104. [*sic*]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the market for options orders and executions is already highly competitive and Phlx's proposal is itself pro-competitive in several ways. First, the TOPO data feed offers a competitive, lower-priced alternative to the consolidated data OPRA feed for users and situations where consolidated data is unnecessary. Second, the Phlx believes that offering the TOPO data feed will help attract new users and new order flow to the Phlx market, thereby improving Phlx's ability to compete in the market for options order flow and executions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests accelerated approval in order to expedite the availability of TOPO, which should promote consistency and transparency in the Exchange's markets.

The Exchange believes that accelerated approval should provide customers, and broker-dealers that make routing decisions on behalf of customers, with greater transparency in the Phlx markets on an expedited basis. Once a full 21-day comment period has taken place, the Exchange believes (in the absence of any comments that would require a response) that it is appropriate for the Commission to accelerate the operative date for TOPO fees because the proposed rule change is in the public interest and supports the protection of investors by allowing data distributors to make additional market data available to investors that choose to purchase it. Widespread availability of Phlx options data benefits average investors by improving access to real-time market data that investors can use to make better-informed trading decisions. Additionally, to the extent users can substitute the lower-priced TOPO data for the higher-priced consolidated data feed, those users will have the opportunity to pass the savings on to investors in the form of lower overall trading costs.

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2009–54 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2009–54. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File Number SR–Phlx–2009–54 and should be submitted on or before July 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–15997 Filed 7–7–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60195; File No. SR–NYSEArca–2009–55]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the Dent Tactical ETF

June 30, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on June 18, 2009, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): The Dent Tactical ETF. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyx.com,* at the Exchange's principal office, and at the Commission's Public Reference Room.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the following Managed Fund Shares[4] (''Shares'') under NYSE Arca Equities Rule 8.600: The Dent Tactical ETF (''Fund'').[5] The Shares will be offered by AdvisorShares Trust (''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[6] According to the Registration Statement, the Fund is a ''fund of funds,'' which means that the Fund seeks to achieve its investment objective by investing primarily in other exchange-traded funds (''ETFs'') that are registered under 1940 Act and also shares of certain exchange-traded products that are not registered as investment companies under the 1940 Act (collectively, the ''Underlying ETPs'').[7] Unlike certain of the Underlying ETPs, which may be based on underlying indexes, the Fund will not track or replicate a specific index. The Fund charges its own expenses and also indirectly bears a proportionate share of the Underlying ETPs' expenses.

Underlying ETPs will be listed on a national securities exchange and such Underlying ETPs may hold non-U.S. issues.

The investment advisor to the Fund is AdvisorShares Investments, LLC (the ''Advisor''). The day-to-day portfolio management of the Fund is provided by HS Dent Investment Management, LLC, the sub-advisor to the Fund (''Sub-Advisor''). The Sub-Advisor selects a group of Underlying ETPs for the Fund in which to invest pursuant to an ''active'' management strategy for asset allocation, security selection and portfolio construction. The Fund will periodically change the composition of its portfolio to best meet its investment objective. Neither the Advisor nor the Sub-Advisor is affiliated with a broker-dealer.[8]

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[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] E-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated June 30, 2009 (''June 30 E-mail'').

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment advisor consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof.

[5] The Commission previously approved listing and trading on the Exchange of the following actively managed funds under Rule 8.600. *See* Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR–NYSEArca–2008–25) (order approving Rule 8.600 and Exchange listing and trading of PowerShares Active AlphaQ Fund, PowerShares Active Alpha Multi-Cap Fund, PowerShares Active Mega-Cap Portfolio and PowerShares Active Low Duration Portfolio); Securities Exchange Act Release No. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); Securities Exchange Act Release No. 59826 (April 28, 2009), 74 FR 20512 (May 4, 2009) (SR–NYSEArca–2009–22) (order approving Exchange listing and trading of Grail American Beacon Large Cap Value ETF).

[6] The Trust is registered under the 1940 Act. On June 9, 2009, the Trust filed with the Commission Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–157876 and 811–22110) (''Registration Statement''). The Trust has also filed a Third Amended Application for an Order under Sections 6(c) and 17(b) of the Investment Company Act of 1940 (''1940 Act'') for an exemption from certain provisions of the 1940 Act and rules thereunder (File No. 812–13488). The description of the operation of the Trust and the Fund herein is based on the Registration Statement.

[7] Underlying ETPs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600).

[8] The Exchange represents that the Advisor, as the investment advisor of the Fund, and its related personnel, are subject to Investment Advisers Act Rule 204A–1. This Rule specifically requires the adoption of a code of ethics by an investment advisor to include, at a minimum: (i) Standards of business conduct that reflect the firm's/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable Federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A–1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer (''CCO'') or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment advisor to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment advisor to provide investment advice to clients unless such investment advisor has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the

Description of the Fund

According to the Registration Statement, the Fund's investment objective is long-term growth of capital. The Fund Sub-Advisor seeks to achieve the Fund's investment objective by identifying, through proprietary economic and demographic analysis, the overall trend of the U.S. and global economies, and then implementing investment strategies in asset classes that the Sub-Advisor believes will benefit from these trends. The Sub-Advisor believes its modeling can accurately forecast economic trends such as gross domestic product (''GDP'') growth and inflation based on its research concerning consumer spending, consumer debt, consumer savings and investment, and technological innovation. The Sub-Advisor is of the opinion that maximizing investment returns depends on understanding the right balance of asset classes that are favored by different fundamental economic trends and accurately rebalancing the Fund's investments as the trends emerge.

According to the Registration Statement, the Sub-Advisor follows its model to determine how offensive or defensive the Fund portfolio will be, and then selects securities to buy or sell. Offensive holdings are those that the Sub-Advisor anticipates will appreciate in value. Defensive positions are those which the Sub-Advisor anticipates will maintain their value, regardless of market conditions or cycles. According to the Registration Statement, the model is objective and the Sub-Advisor applies little subjective judgment in security selection, retention, or sales decisions.

The securities that comprise the Fund's offensive strategy are selected using the following method: The Sub-Advisor identifies sectors, styles and/or geographic regions it believes are demographically favored based on its research. Using a proprietary selection process, the Sub-Advisor creates a universe of Underlying ETPs [9] that correspond to the favored sectors, styles and/or geographic regions. On a monthly basis, using a proprietary ranking process and objective third party research, the selected Underlying ETPs are ranked by the Sub-Advisor according to their relative strength. The relative strength is gauged by a third party research firm that measures price momentum and similar characteristics in order to determine relative strength. The Sub-Advisor then constructs the Fund portfolio using highly ranked Underlying ETPs that meet a minimum relative strength requirement. The Fund is managed as an allocated fund of funds made up of these highly ranked Underlying ETPs selected by the Sub-Advisor. When there are not sufficient sectors and/or Underlying ETPs that meet the minimum relative strength requirement of the model, the balance of the Portfolio's assets will be allocated to defensive investments such as high quality debt, money market instruments, or other investments as determined by the Sub-Advisor.[10]

While the model is applied monthly, the holdings of the Portfolio will be reallocated at the Sub-Advisor's discretion over the course of the month. As a result, the Fund may have a high rate of portfolio turnover.

The Fund and the Underlying ETPs may invest in equity securities. As described in the Registration Statement, equity securities represent ownership interests in a company or partnership and consist of common stocks, preferred stocks, warrants to acquire common stock, securities convertible into common stock, and investments in master limited partnerships. Except for Underlying ETPs that may hold non-US issues, the Fund will not otherwise invest in non-U.S. issues.

The Fund may use futures contracts and related options for bona fide hedging; attempting to offset changes in the value of securities held or expected to be acquired or be disposed of; attempting to gain exposure to a particular market, index or instrument; or other risk management purposes. To the extent the Fund uses futures and/or options on futures, it will do so in accordance with Rule 4.5[11] under the Commodity Exchange Act.[12] According to the Registration Statement, the Fund will reduce the risk that it will be unable to close out a futures contract by only entering into futures contracts that are traded on a national futures exchange regulated by the Commodities Futures Trading Commission.

The Fund may purchase and write put and call options on indices and enter into related closing transactions; may trade put and call options on securities, securities indices and currencies, as the Investment Sub-Advisor determines is appropriate in seeking the Fund's investment objective, and except as restricted by the Fund's investment limitations (as described in the Registration Statement); may enter into repurchase agreements with financial institutions; may use reverse repurchase agreements as part of the Fund's investment strategy; may enter into swap agreements, including, but not limited to, equity index swaps and interest rate swap agreements; and may make short-term investments in U.S. Government securities. In addition, the Fund may invest up to 15% of its net assets in illiquid securities. For this purpose, ''illiquid securities'' are securities that the Fund may not sell or dispose of within seven days in the ordinary course of business at approximately the amount at which the Fund has valued the securities.

The Fund, from time to time, in the ordinary course of business, may purchase securities on a when-issued or delayed-delivery basis (*i.e.,* delivery and payment can take place between a month and 120 days after the date of the transaction). The Fund may invest in U.S. Treasury zero-coupon bonds.

As stated in the Registration Statement, it is a fundamental policy of the Fund that it may not, with respect to 75% of its total assets, (i) purchase securities of any issuer (except securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer; or (ii) acquire more than 10% of the outstanding voting securities of any one issuer.[13] In addition, the Fund may not purchase any securities which would cause 25% or more of its total assets to be invested in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries, provided that this limitation does not apply to investments in securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or shares of investment companies.[14]

According to the Registration Statement, the Fund will seek to qualify for treatment as a Regulated Investment

investment advisor and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[9] *See* June 30 e-mail, *supra,* note 3.

[10] Terms relating to the Trust and the Shares referred to, but not defined, herein are defined in the Registration Statement.

[11] 17 CFR 4.5.

[12] 7 U.S.C. 1 *et seq.*

[13] This diversification standard is contained in Section 5(b)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a).

[14] Such fundamental policies may not be changed without the vote of a majority of the outstanding voting securities of the Fund.

Company (''RIC'') under the Internal Revenue Code.[15]

To respond to adverse market, economic, political or other conditions, the Fund may invest 100% of its total assets, without limitation, in high-quality debt securities and money market instruments. The Fund may be invested in these instruments for extended periods, depending on the Sub-Advisor's assessment of market conditions. These debt securities and money market instruments include shares of other mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities, repurchase agreements and bonds that are BBB or higher.

Creations and redemptions of Shares occur in large specified blocks of Shares, referred to as ''Creation Units.'' According to the Registration Statement, the shares of the Fund are ''created'' at their net asset value (''NAV'') by market makers, large investors and institutions only in block-size Creation Units of 25,000 shares or more. A ''creator'' enters into an authorized participant agreement (a ''Participant Agreement'') with the Fund's distributor (the ''Distributor'') or a DTC participant that has executed a Participant Agreement with the Distributor (an ''Authorized Participant''), and deposits into the Fund a portfolio of securities closely approximating the holdings of the Fund and a specified amount of cash, together totaling the NAV of the Creation Unit(s), in exchange for 25,000 shares of the Fund (or multiples thereof). Similarly, shares can only be redeemed in Creation Units, generally 25,000 shares or more, principally in-kind for a portfolio of securities held by the Fund and a specified amount of cash together totaling the NAV of the Creation Unit(s). Shares are not redeemable from the Fund except when aggregated in Creation Units. The prices at which creations and redemptions occur are based on the next calculation of NAV after an order is received in a form prescribed in the Participant Agreement.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 [16] under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.

Availability of Information

The Fund's Web site (*http://www.advisorshares.com*), which will be publicly available prior to the public offering of Shares, will include a form of the Prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[17] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[18]

On a daily basis, the Advisor will disclose for each portfolio security or other financial instrument of the Fund the following information: Ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio.[19] In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange (''NYSE'') via the National Securities Clearing Corporation. The basket represents one Creation Unit of the Fund. The Web site information will be publicly available at no charge.

The NAV of the Fund will normally be determined as of the close of the regular trading session on the NYSE (ordinarily 4 p.m. Eastern Time) on each business day.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *http://www.sec.gov.* Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be disseminated by the Exchange at least every 15 seconds during the Core Trading Session through the facilities of CTA. The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

[15] According to the Registration Statement, one of several requirements for RIC qualification is that a Fund must receive at least 90% of the Fund's gross income each year from dividends, interest, payments with respect to securities loans, gains from the sale or other disposition of stock, securities or foreign currencies, or other income derived with respect to the Fund's investments in stock, securities, foreign currencies and net income from an interest in a qualified publicly traded partnership (the ''90% Test''). A second requirement for qualification as a RIC is that a Fund must diversify its holdings so that, at the end of each fiscal quarter of the Fund's taxable year: (a) At least 50% of the market value of the Fund's total assets is represented by cash and cash items, U.S. Government securities, securities of other RICs, and other securities, with these other securities limited, in respect to any one issuer, to an amount not greater than 5% of the value of the Fund's total assets or 10% of the outstanding voting securities of such issuer; and (b) not more than 25% of the value of its total assets are invested in the securities (other than U.S. Government securities or securities of other RICs) of any one issuer or two or more issuers which the Fund controls and which are engaged in the same, similar, or related trades or businesses, or the securities of one or more qualified publicly traded partnership (the ''Asset Test'').

[16] 17 CFR 240.10A–3.

[17] The Bid/Ask Price of the Fund is determined using the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[18] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T + 1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[19] *See* June 30 E-mail, *supra,* note 3.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[20] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be $0.01.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members of ISG.[21] In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m. Eastern Time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[22] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to rule-comments@sec.gov. Please include File

[20] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[21] For a list of the current members of ISG, *see http://www.isgportal.org.* The Exchange may obtain information from futures exchanges with which the Exchange has entered into a surveillance sharing agreement or that are ISG members. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[22] 15 U.S.C. 78f(b)(5).

Number SR–NYSEArca–2009–55 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–55. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at NYSE Arca's principal office and on its Internet Web site at *http://www.nyx.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–55 and should be submitted on or before July 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–15995 Filed 7–7–09; 8:45 am]

BILLING CODE 8010–01–P

[23] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6691]

Culturally Significant Objects Imported for Exhibition Determinations: ''Watteau to Degas: French Drawings from the Frits Lugt Collection''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Watteau to Degas: French Drawings from the Frits Lugt Collection,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Frick Collection, New York, NY, from on or about October 6, 2009, until on or about January 10, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: June 29, 2009.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–16121 Filed 7–7–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6636]

Notice of Closed Meeting of the Cultural Property Advisory Committee

In accordance with the provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*) (the Act) there will be a meeting of the Cultural Property Advisory Committee on (Committee) Monday, July 27 and on Tuesday, July 28 at the U.S. Department of State. Pursuant to section 2605(h) of the Act and 5 U.S.C. 552b(c)(9)(B), the meeting shall be closed to the public.

At this meeting, the Committee will carry out its interim review function with respect to the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Colombia Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures and Certain Ecclesiastical Material from the Colonial Period of Colombia concluded on March 15, 2006; and, the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Italy Concerning the Imposition of Import Restrictions on Archaeological Material Representing the Pre-Classical, Classical and Imperial Roman Periods of Italy, concluded on January 19, 2001, and extended in 2006. Pursuant to the Act, the Committee will conduct an interim review of the effectiveness of the MOUs and will focus its attention on Article II of each MOU. This is not a meeting to consider extension of the MOUs. Such a meeting will be scheduled and announced in the future and will include a public session.

The Committee's responsibilities are carried out in accordance with provisions of the Act. Related information may be found at *http://exchanges.state.gov/culprop*.

Dated: June 19, 2009.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–16058 Filed 7–7–09; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS392/2]

WTO Dispute Settlement Proceeding Regarding United States—Certain Measures Affecting Imports of Poultry From China

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that on June 23, 2009, the People's Republic of China (''China'') requested the establishment of a panel under the *Marrakesh*

Agreement Establishing the World Trade Organization (''WTO Agreement'') with respect to certain measures affecting the import of poultry products from China into the United States. That request may be found at *http://www.wto.org* contained in a document designated as WT/DS392/2. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before September 15 to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *http://www.regulations.gov,* docket number USTR–2009–0014. If you are unable to provide submissions by *http://www.regulations.gov*, please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission. If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: David Yocis, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–9663.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that the establishment of a dispute settlement panel has been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (''DSU''). If such a panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by China

In its request for the establishment of a panel, China challenges section 727 of division A of the Omnibus Appropriations Act, 2009 (Pub. L. 111–8), which prohibits the use of funds appropriated under that Act from being used to establish or implement a rule allowing poultry products to be imported into the United States from China. According to China, section 727 effectively prohibits the U.S. Department of Agriculture from establishing or implementing measures allowing for the importation from China of poultry products or taking actions to expand the class of poultry products from China eligible for import into the United States. China alleges that the United States thus imposes a moratorium on the consideration, approval, and implementation of actions that would be necessary under U.S. law for China to export poultry products to the United States. China claims that these measures amount to a quantitative restriction in breach of Article XI:1 of the *General Agreement on Tariffs and Trade 1994* (''GATT 1994'') and Article 4.2 of the *Agreement on Agriculture.* In addition, China alleges that by imposing this restriction with respect to imports from China, but not those of other WTO Members, the United States acts inconsistently with Article I:1 of the GATT 1994. Finally, China claims that, to the extent that some or all of these U.S. measures are sanitary or phytosanitary measures within the meaning of the *Agreement on the Application of Sanitary and Phytosanitary Measures,* they are inconsistent with Articles 2.1–2.3, 3.1, 3.3, 5.1–5.7, and 8 of that agreement.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *http://www.regulations.gov* docket number USTR–2009–0014. If you are unable to provide submissions by *http://www.regulations.gov*, please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *http://www.regulations.gov,* enter docket number USTR–2009–0014 on the home page and click ''go''. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Send a Comment or Submission.'' (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.)

The *http://www.regulations.gov* site provides the option of providing comments by filling in a ''General Comments'' field, or by attaching a document. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''General Comments'' field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''*Business Confidential''* at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''*Submitted in Confidence''* at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

USTR will maintain a docket on this dispute settlement proceeding, accessible to the public. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute; the report of the panel; and, if applicable, the report of the Appellate Body.

Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15 or information determined by USTR to be confidential in accordance with 19 U.S.C. 2155(g)(2). Comments open to public inspection may be viewed on the *http://www.regulations.gov* Web site.

Daniel Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. E9–16061 Filed 7–7–09; 8:45 am]

BILLING CODE 3190–W9–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Bexar County, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: Pursuant to 40 CFR 1508.22 and 43 TAC § 2.5(e)(2), the FHWA, Texas Department of Transportation (TxDOT) and Alamo Regional Mobility Authority are issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed transportation project on United States Highway (US) 281 from Loop (LP) 1604 to Borgfeld Road, about 7.5 miles, in Bexar County, Texas. Areas within the city of San Antonio are included in the study area.

FOR FURTHER INFORMATION CONTACT: Mr. Salvador Deocampo, District Engineer, District A, Federal Highway Administration (FHWA), Texas Division, 300 East 8th Street, Rm. 826, Austin, Texas 78701, Telephone 512–536–5950.

SUPPLEMENTARY INFORMATION: US 281 within the project limits is listed in the San Antonio-Bexar County Metropolitan Planning Organization (SA–BCMPO) Mobility 2030 Plan (the long-range transportation plan) as a six-lane tolled facility; other solutions for improving mobility within the US 281 corridor may be identified in future updates and/or amendments to the long-range transportation plan. The existing facility is a four-to-six-lane non-toll divided arterial with partial access controls. The need for improvements to US 281 has resulted from a historic and continuing trend in population and employment growth within the project corridor and surrounding areas. This growth has generated increasing levels of vehicle miles traveled, leading to higher levels of traffic congestion, vehicle crashes, and declining community quality of life. Without additional transportation improvements it is anticipated that this population and employment growth will result in increased levels of vehicular traffic, crashes and travel delays. Without improvements, accessibility within the corridor is anticipated to become increasingly reduced, its functionality as part of a regional transportation system would decline, and the overall community quality of life would diminish. The objectives of US 281 corridor improvements are to improve mobility, enhance safety, and improve community quality of life. The EIS will develop and evaluate a range of alternatives including ''No-action'' (the no-build alternative), Transportation System Management (TSM)/Transportation Demand Management (TDM), rapid transit and roadway build alternatives.

The EIS will analyze potential direct, indirect and cumulative impacts from construction and operation of proposed corridor improvements including, but not limited to, the following: Transportation impacts; air quality and noise impacts; water quality impacts including storm water runoff; impacts to waters of the United States including wetlands; impacts to floodplains; impacts to historic and archeological resources; impacts to threatened and endangered species; socioeconomic impacts including environmental justice communities; impacts to and/or potential displacements of land use, vegetation, residents and businesses; and impacts to aesthetic and visual resources.

Public involvement is a critical component of the project development process and will occur throughout the planning and study phases. Letters describing the proposed action including a request for comments will be sent to appropriate Federal, State, and local agencies and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public scoping meetings are planned for late summer and fall of 2009. The purpose of the public scoping meetings is to identify significant and other relevant issues related to US 281 mobility improvements as part of the National Environmental Policy Act process. The scoping meetings, pursuant to Section 6002 of SAFETEA–LU, will provide opportunities for participating agencies, cooperating agencies, and the public to be involved in review and comment on the draft coordination plan, defining the need and purpose for the proposed project, and determining the range of alternatives to be considered in the EIS. Additional public meetings will be held on dates to be determined at a later time. In addition to the public meetings, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Such comments or questions concerning this proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 1, 2009.

Achille Alonzi,

Assistant Division Administrator.

[FR Doc. E9–16150 Filed 7–7–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Office of Commercial Space Transportation; Notice of Availability of the Environmental Assessment and Finding of No Significant Impact for Pegasus Launches at the U.S. Army Kwajalein Atoll Ronald Reagan Ballistic Missile Defense Test Site

AGENCY: The Federal Aviation Administration (FAA), lead agency; U.S. Army, cooperating agency.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), Council on Environmental Quality NEPA implementing regulations (40 CFR Parts 1500–1508), and FAA Order 1050.1E, Change 1, the FAA is announcing the availability of the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for Pegasus Launches at the U.S. Army Kwajalein Atoll Ronald Reagan Ballistic Missile Defense Test Site (USAKA/RTS).

Orbital Sciences Corporation has applied to the FAA for renewal of Launch Operator License (LLO) 04–069. Under the Proposed Action (the preferred alternative), the FAA would

renew Orbital Sciences Corporation's Launch Operator License for launch operations of the Pegasus expendable launch vehicle family. Launches would occur from USAKA/RTS in the Republic of the Marshall Islands, a subordinate command of the U.S. Army Space and Strategic Defense Command.

The Pegasus expendable launch vehicle consists of three solid rocket propellant motor stages with an optional liquid propellant-based Hydrazine Auxiliary Propulsion System (HAPS) and is designed to be carried to its launch point by an L–1011 Launch Carrier Aircraft (LCA). The L–1011 LCA, which consists of FAA-approved standard engines, uses Commercial Jet-A or Military JP4 or JP10 fuel. Pre-launch and mating activities would be performed at Vandenberg Air Force Base under LLO 00–053. A separate environmental review was conducted in conjunction with the approval of LLO 00–053. Therefore, the Proposed Action addressed in the EA does not include Pegasus pre-launch processing operations.

Once the LCA and mated launch vehicle have landed at USAKA/RTS, system checks would be conducted. The LCA would be refueled. Concurrently, an advisory to nearby ships and aircraft would be issued. The LCA and mated Pegasus vehicle would leave USAKA/RTS under jet power and travel to the launch site over the Pacific Ocean. Following the release of the Pegasus launch vehicle, the L–1011 LCA would return to a designated runway at USAKA/RTS. The first and second stages would detach during flight and fall, unpowered, to the ocean. The third stage would continue to carry the payload into orbital insertion; detach from the payload and optional HAPS (if appropriate), and fall into the ocean. None of the jettisoned stages would be recovered. The EA addresses the potential environmental impacts of implementing the Proposed Action and the No Action Alternative of not renewing Orbital Sciences' Launch Operator License.

The FAA has posted the EA and FONSI on the FAA Web site at *http://ast.faa.gov*. In addition, hardcopies and/or CDs of the EA and FONSI were sent to persons and agencies on the distribution list (found in Chapter 7 of the EA).

Additional Information: Under the Proposed Action (the preferred alternative), the FAA would renew Orbital Sciences' Launch Operator License for launch operations of the Pegasus expendable launch vehicle family. The L–1011 LCA with the mated Pegasus launch vehicle would travel under jet power to the launch site over the Pacific Ocean. At an altitude of 35,000 feet, the L–1011 would release the Pegasus launch vehicle and return to a designated runway at USAKA/RTS. The Pegasus vehicle would free fall for 5 seconds before the first stage motor was ignited. The first stage of the Pegasus vehicle would burn for approximately 77 seconds following ignition while propelling the vehicle to an altitude of approximately 223,000 feet. The spent first stage would detach and fall back to the ocean. The second stage motor would ignite and burn for approximately 83 seconds, carrying the vehicle and its payload to an altitude of 689,000 feet. During the ignition of the second stage, the payload fairing would jettison and fall into the ocean. The spent second stage would detach and fall to the ocean. The third stage would continue to burn for 65 seconds carrying the payload into orbital insertion; detach from payload and optional HAPS (if appropriate), and fall into the ocean. The optional HAPS fourth stage could be used in or near orbit to obtain higher altitudes, achieve finer altitude accuracy, or conduct more complex maneuvers. None of the jettisoned stages would be recovered.

The L–1011 LCA, which consists of FAA-approved standard engines, uses Commercial Jet-A or Military JP4 or JP10 fuel. Section 3.1.2.6 of the 1989 EA includes a detailed description of the Pegasus launch vehicle.

The only alternative to the Proposed Action analyzed in the EA is the No Action Alternative. Under this alternative, the FAA would not renew Orbital Sciences' Launch Operator License and there would be no commercial launches of the Pegasus launch vehicle conducted from USAKA/RTS. Existing operating procedures, military operations, and other launch activities would continue at USAKA/RTS.

Resource areas were considered to provide a context for understanding and assessing the potential environmental effects of the Proposed Action. The EA does not analyze all environmental resources areas in detail because not all resource areas are affected by the Proposed Action. The resource areas analyzed in detail in the EA included air quality; biological resources; hazardous materials, pollution prevention, and solid waste; noise; and water resources (surface water, groundwater, floodplains, and wetlands), and cumulative impacts.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Czelusniak, Environmental Specialist, Office of Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue, SW., Suite 331, Washington, DC 20591; telephone (202) 267–5924; e-mail *Daniel.Czelusniak@faa.com.*

Issued in Washington, DC on July 1, 2009.

Responsible Official:

Michael McElligott,

Manager, Space Systems Development Division.

[FR Doc. E9–16127 Filed 7–7–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0042]

Proposed Information Collection (Statement of Accredited Representative in Appealed Case) Activity: Comment Request

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Board of Veterans' Appeals (BVA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to summarize a claimant's disagreement of denied VA benefits before the Board of Veterans' Appeals.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 8, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* to Sue Hamlin, Board of Veterans' Appeals (01C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *Sue.Hamlin@mail.va.gov.* Please refer to ''OMB Control No. 2900–0042'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Sue Hamlin at (202) 565–5686 or FAX (202) 565–4064.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, BVA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of BVA's functions, including whether the information will have practical utility; (2) the accuracy of BVA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Statement of Accredited Representative in Appealed Case, VA Form 646.

OMB Control Number: 2900–0042.

Type of Review: Extension of a currently approved collection.

Abstract: A recognized organization, attorney, agent, or other authorized person representing VA claimants before the Board of Veterans' Appeals complete VA Form 646 to provide identifying data describing the basis for their claimant's disagreement with the denial of VA benefits. VA uses the data collected to identify the issues in dispute and to prepare a decision responsive to the claimant's disagreement.

Affected Public: Not-for-profit institutions.

Estimated Annual Burden: 38,604.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 38,604.

Dated: July 1, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–15924 Filed 7–7–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
July 8, 2009

Part II

Securities and Exchange Commission

17 CFR Parts 270 and 274
Money Market Fund Reform; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 274

[Release No. IC–28807; File No. S7–11–09]

RIN 3235–AK33

Money Market Fund Reform

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is proposing amendments to certain rules that govern money market funds under the Investment Company Act. The amendments would: Tighten the risk-limiting conditions of rule 2a–7 by, among other things, requiring funds to maintain a portion of their portfolios in instruments that can be readily converted to cash, reducing the weighted average maturity of portfolio holdings, and limiting funds to investing in the highest quality portfolio securities; require money market funds to report their portfolio holdings monthly to the Commission; and permit a money market fund that has ''broken the buck'' (*i.e.,* re-priced its securities below $1.00 per share) to suspend redemptions to allow for the orderly liquidation of fund assets. In addition, the Commission is seeking comment on other potential changes in our regulation of money market funds, including whether money market funds should, like other types of mutual funds, effect shareholder transactions at the market-based net asset value, *i.e.,* whether they should have ''floating'' rather than stabilized net asset values. The proposed amendments are designed to make money market funds more resilient to certain short-term market risks, and to provide greater protections for investors in a money market fund that is unable to maintain a stable net asset value per share.

DATES: Comments should be received on or before September 8, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–11–09 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–11–09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Office of Regulatory Policy, at (202) 551–6792, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for public comment amendments to rules 2a–7 [17 CFR 270.2a–7], 17a–9 [17 CFR 270.17a–9], and 30b1–5 [17 CFR 270.30b1–5], new rules 22e–3 [17 CFR 270.22e–3] and 30b1–6 [17 CFR 270.30b1–6], and new Form N–MFP under the Investment Company Act of 1940 (''Investment Company Act'' or ''Act'').[1]

Table of Contents

I. Background

A. Money Market Funds

Money market funds are open-end management investment companies that are registered under the Investment Company Act and regulated under rule 2a–7 under the Act. They invest in high-quality, short-term debt instruments such as commercial paper, Treasury bills and repurchase agreements.[2] Money market funds pay dividends that reflect prevailing short-term interest rates and, unlike other investment companies, seek to maintain a stable net asset value per share, typically $1.00 per share.[3]

This combination of stability of principal and payment of short-term yields has made money market funds one of the most popular investment vehicles for many different types of investors. Commonly offered features, such as check-writing privileges, exchange privileges, and near-immediate liquidity, have contributed to the popularity of money market funds. More than 750 money market funds are registered with the Commission, and collectively they hold approximately

[1] 15 U.S.C. 80a. Unless otherwise noted, all references to statutory sections are to the Investment Company Act, and all references to rules under the Investment Company Act, including rule 2a–7, will be to Title 17, Part 270 of the Code of Federal Regulations [17 CFR part 270].

[2] Money market funds are also sometimes called ''money market mutual funds'' or ''money funds.''

[3] *See generally* Valuation of Debt Instruments and Computation of Current Price Per Share by Certain Open-End Investment Companies (Money Market Funds), Investment Company Act Release No. 13380 (July 11, 1983) [48 FR 32555 (July 18, 1983)] (''1983 Adopting Release''). Most money market funds seek to maintain a stable net asset value per share of $1.00, but a few seek to maintain a stable net asset value per share of a different amount, *e.g.,* $10.00. For convenience, throughout this release, the discussion will simply refer to the stable net asset value of $1.00 per share.

$3.8 trillion of assets.[4] Money market funds account for approximately 39 percent of all investment company assets.[5]

Individual (or ''retail'') investors use money market funds for a variety of reasons. For example, they may invest in money market funds to hold cash temporarily or to take a temporary ''defensive position'' in anticipation of declining equity markets. Money market funds also play an important role in cash management accounts for banks, broker-dealers, variable insurance products, and retirement accounts. As of December 2008, about one-fifth of U.S. households' cash balances were held in money market funds.[6]

Different types of money market funds have been introduced to meet the differing needs of retail money market fund investors. Historically, most retail investors have invested in ''prime money market funds,'' which hold a variety of taxable short-term obligations issued by corporations and banks, as well as repurchase agreements and asset backed commercial paper secured by pools of assets.[7] Prime money market funds typically have paid higher yields than other types of money market funds available to retail investors.[8] ''Government money market funds'' principally hold obligations of the U.S. Government, including obligations of the U.S. Treasury and federal agencies and instrumentalities, as well as repurchase agreements collateralized by Government securities. Some government money market funds limit themselves to holding only Treasury obligations. Compared to prime funds, government funds generally offer greater safety of principal but historically have paid lower yields. ''Tax exempt money market funds'' primarily hold obligations of state and local governments and their instrumentalities, and pay interest that is generally exempt from federal income taxes.

Institutional investors account for a growing portion of investments in money market funds. These investors include corporations, bank trust departments, securities lending operations of brokerage firms, state and local governments, hedge funds and other private funds. Many corporate treasurers of large businesses have essentially ''outsourced'' cash management operations to money market funds, which may be able to manage cash more efficiently due both to the scale of their operations and their expertise. As of January 2008, approximately 80 percent of U.S. companies used money market funds to manage at least a portion of their cash balances.[9] At year-end 2008, U.S. non-financial businesses held approximately 32 percent of their cash balances in money market funds.[10] According to the Investment Company Institute, about 66 percent of money market fund assets are held in money market funds or share classes intended to be sold to institutional investors (''institutional money market funds'').[11]

Institutional money market funds hold securities similar to those held by prime funds and government funds. They typically have large minimum investment amounts (*e.g.,* $1 million), and offer lower expenses and higher yields due to the large account balances, large transaction values, and smaller number of accounts associated with these funds. As we will discuss in more detail below, institutional money market funds also tend to have greater investment inflows and outflows than retail money market funds.

B. Market Significance

Due in large part to the growth of institutional funds, money market funds have grown substantially over the last decade, from approximately $1.4 trillion in assets under management at the end of 1998 to approximately $3.8 trillion in assets under management at the end of 2008.[12] During this same period, retail taxable money market fund assets grew from approximately $835 billion to $1.36 trillion, or 63 percent, while institutional taxable money market fund assets grew from approximately $516 billion to $2.48 trillion, or 380 percent.[13]

One implication of the growth of money market funds is the increased role they play in the capital markets. They are by far the largest holders of commercial paper, owning almost 40 percent of the outstanding paper.[14] The growth of the commercial paper market has generally followed the growth of money market funds over the last three decades.[15] Today, money market funds provide a substantial portion of short-term credit extended to U.S. businesses.

Money market funds also play a large role in other parts of the short-term market. They hold approximately 23 percent of all repurchase agreements, 65 percent of state and local government short-term debt, 24 percent of short-term Treasury securities, and 44 percent of short-term agency securities.[16] They serve as a substantial source of financing in the broader capital markets, holding approximately 22 percent of all state and local government debt, approximately nine percent of U.S. Treasury securities and 15 percent of agency securities.[17]

As a consequence, the health of money market funds is important not only to their investors, but also to a

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[4] *See* Investment Company Institute, *Trends in Mutual Fund Investing,* Apr. 2009, *available at http://www.ici.org/highlights/trends_04_09* (''ICI Trends'').

[5] *See id.*

[6] *See* Investment Company Institute, Report of the Money Market Working Group, at 21 (Mar. 17, 2009), *available at http://www.ici.org/pdf/ppr_09_mmwg.pdf* (''ICI Report'').

[7] *See* Investment Company Institute, 2009 Investment Company Fact Book, at 147, Table 38 (May 2009), *available at http://www.ici.org/pdf/2009_factbook.pdf* (''2009 Fact Book'').

[8] *See, e.g., iMoneyNet Money Fund Report* (Mar. 20, 2009), *available at http://www.imoneynet.com/files/Publication_News/mfr.pdf.*

[9] *See* ICI Report, *supra* note 6, at 28–29, Figure 3.7.

[10] *See id.* at 28–29, Figure 3.6.

[11] *See* Investment Company Institute, *Money Market Mutual Fund Assets,* June 11, 2009, *available at http://www.ici.org/highlights/mm_06_11_09.*

[12] *See* Investment Company Institute, 1999 Mutual Fund Fact Book, at 4 (May 1999), available at *http://www.ici.org/pdf/1999_factbook.pdf;* Investment Company Institute, *Trends in Mutual Fund Investing,* May 28, 2009, available at *http://www.ici.org/highlights/trends_04_2009.*

[13] *See* Investment Company Institute, 2008 Investment Company Fact Book, at 144, Table 35 (May 2008) (''2008 Fact Book''); 2009 Fact Book, *supra* note 7, at 147, Table 38.

[14] Federal Reserve Board, Statistical Release Z.1: Flow of Funds Accounts of the United States: Flows and Outstandings Fourth Quarter 2008, at 86, Table L.208 (Mar. 12, 2009), available at *http://www.federalreserve.gov/releases/z1/Current/z1.pdf* (''Fed. Flow of Funds Report'').

[15] *See* Instruments of the Money Market, at 121, Table 2 (Timothy Q. Cook & Robert K. Laroche eds., 1993), available at *http://www.richmondfed.org/publications/research/special_reports/instruments_of_the_money_market/pdf/full_publication.pdf;* Fed. Flow of Funds Report, *supra* note 14, at Tables L.206 and L.208. One commenter has called the growth of these two markets ''inextricably linked.'' *See* Leland Crabbe & Mitchell A. Post, *The Effect of SEC Amendments to Rule 2a–7 on the Commercial Paper Market,* at 4 (Federal Reserve Board, Finance and Economics Discussion Series #199, May 1992) (''Crabbe & Post'').

[16] These securities include securities issued or guaranteed by the Federal National Mortgage Association (''Fannie Mae''), the Federal Home Loan Mortgage Corporation (''Freddie Mac'') and the Federal Home Loan Banks. *See* ICI Report, *supra* note 6, at 19, Figure 2.3. *See generally* U.S. Treasury Department, FAQs on Fixed Income Agency Securities, available at *http://www.treas.gov/education/faq/markets/fixedfederal.shtml.*

[17] *See* Fed. Flow of Funds Report, *supra* note 14 (percentages derived from flow of funds data). Foreign banks also have relied substantially on U.S. money market funds for dollar-denominated funding. *See* Naohiko Baba, Robert N. McCauley, & Srichander Ramaswamy, *U.S. Dollar Money Market Funds and non-U.S. Banks,* BIS Quarterly Review, Mar. 2009, *available at http://www.bis.org/publ/qtrpdf/r_qt0903g.htm* (''U.S. Dollar Money Market Funds'').

large number of businesses and state and local governments that finance current operations through the issuance of short-term debt. A ''break in the link [between borrowers and money market funds] can lead to reduced business activity and pose risks to economic growth.'' [18] The regulation of money market funds, therefore, is important not only to fund investors, but to a wide variety of operating companies as well as state and local governments that rely on these funds to purchase their short-term securities.

C. Regulation of Money Market Funds

The Commission regulates money market funds under the Investment Company Act and pursuant to rule 2a–7 under the Act. We adopted rule 2a–7 as an exemptive rule in 1983 and amended it in 1986 to facilitate the development of tax-exempt money market funds.[19] We also amended it substantially in 1991 (taxable funds) and 1996 (tax-exempt funds) to provide for a more robust set of regulatory conditions and to expand the rule to apply it to any investment company holding itself out as a money market fund.[20]

The Investment Company Act and applicable rules generally require that mutual funds price their securities at the current net asset value per share by valuing portfolio instruments at market value or, if market quotations are not readily available, at fair value determined in good faith by the board of directors.[21] As a consequence, the price at which funds will sell and redeem shares ordinarily fluctuates daily with changes in the value of the fund's portfolio securities. These valuation and pricing requirements are designed to prevent investors' interests from being diluted or otherwise adversely affected if fund shares are not priced fairly.[22]

Rule 2a–7, however, permits money market funds to use the amortized cost method of valuation and penny-rounding method of pricing instead, which facilitate money market funds' ability to maintain a stable net asset value.[23] Under the amortized cost method, portfolio securities generally are valued at cost plus any amortization of premium or accumulation of discount (''amortized cost'').[24] The basic premise underlying money market funds' use of the amortized cost method of valuation is that high-quality, short-term debt securities held until maturity will eventually return to the amortized cost value, regardless of any current disparity between the amortized cost value and market value, and would not ordinarily be expected to fluctuate significantly in value.[25] Therefore, the rule permits money market funds to value portfolio securities at their amortized cost so long as the deviation between the amortized cost and current market value remains minimal and results in the computation of a share price that represents fairly the current net asset value per share of the fund.[26]

To reduce the likelihood of a material deviation occurring between the amortized cost value of a portfolio and its market-based value, the rule contains several conditions (which we refer to as ''risk-limiting conditions'') that limit the fund's exposure to certain risks, such as credit, currency, and interest rate risks.[27] In addition, the rule includes certain procedural requirements overseen by the fund's board of directors. One of the most important is the requirement that the fund periodically ''shadow price'' the amortized cost net asset value of the fund's portfolio against the mark-to-market net asset value of the portfolio.[28] If there is a difference of more than ½ of 1 percent (or $0.005 per share), the fund's board of directors must consider promptly what action, if any, should be taken, including whether the fund should discontinue the use of the amortized cost method of valuation and re-price the securities of the fund below (or above) $1.00 per share, an event colloquially known as ''breaking the buck.'' [29]

D. Recent Developments

Money market funds have had a record of stability during their more than 30 years of operation. Before last fall, only one money market fund had ever broken the buck.[30] This record appears to be due primarily to three factors. First, the short-term debt markets generally were relatively stable during this period. Second, many fund advisers (and their portfolio managers and credit analysts) were skillful in analyzing the risks of portfolio securities and thereby largely avoiding significant losses that could force a fund to break the buck.[31] Finally, fund managers and their affiliated persons have had significant sources of private capital that they were willing to make available to support the stable net asset

[18] *See* Mike Hammill & Andrew Flowers, *MMMF, and AMLF, and MMIFF,* Macroblog (Federal Reserve Bank of Atlanta), Oct. 30, 2008, available at *http://www.macroblog.typepad.com/macroblog/2008/10/index.html.*

[19] *See* 1983 Adopting Release, *supra* note 3; Acquisition and Valuation of Certain Portfolio Instruments by Registered Investment Companies, Investment Company Act Release No. 14983 (Mar. 12, 1986) [51 FR 9773 (Mar. 21, 1986)] (''1986 Adopting Release'').

[20] *See* Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 18005 (Feb. 20, 1991) [56 FR 8113 (Feb. 27, 1991)] (''1991 Adopting Release''); Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 21837 (Mar. 21, 1996) [61 FR 13956 (Mar. 28, 1996)] (''1996 Adopting Release'').

[21] *See* section 2(a)(41) of the Act (defining ''value'' of fund assets); rule 2a–4 (defining ''current net asset value'' for use in computing the current price of a redeemable security); and rule 22c–1 (generally requiring open-end funds to sell and redeem their shares at a price based on the funds' current net asset value as next computed after receipt of a redemption, purchase, or sale order).

[22] *See* Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 17589 at n.7 and accompanying text (July 17, 1990) [55 FR 30239 (July 25, 1990)] (''1990 Proposing Release'').

[23] The penny-rounding method of pricing means the method of computing a fund's price per share for purposes of distribution, redemption and repurchase whereby the current net asset value per share is rounded to the nearest one percent. *See* rule 2a–7(a)(18).

[24] *See* rule 2a–7(a)(2) (defining the amortized cost method as calculating an investment company's net asset value whereby portfolio securities are valued at the fund's acquisition cost as adjusted for amortization of premium or accretion of discount rather than at their value based on current market factors).

[25] *See* 1983 Adopting Release, *supra* note 3, at nn. 3–7 and accompanying text; Valuation of Debt Instruments and Computation of Current Price Per Share by Certain Open-End Investment Companies, Investment Company Act Release No. 12206, at nn. 3–4 and accompanying text (Feb. 1, 1982) [47 FR 5428 (Feb. 5, 1982)] (''1982 Proposing Release'').

[26] *See* rule 2a–7(c)(1), (c)(7)(ii)(C).

[27] For example, the rule requires, among other things, that a money market fund's portfolio securities meet certain credit quality requirements, such as being rated in the top one or two rating categories by nationally recognized statistical rating organizations (''NRSROs''), and by limiting the portion of the fund's portfolio that may be invested in securities rated in the second highest rating category. *See* rule 2a–7(c)(3). The rule also places limits on the remaining maturity of securities in the fund's portfolio. A fund generally may not acquire, for example, any securities with a remaining maturity greater than 397 days, and the dollar-weighted average maturity of the securities owned by the fund may not exceed 90 days. *See* rule 2a–7(c)(2).

[28] *See* rule 2a–7(c)(7); *see also supra* note 21 and accompanying text.

[29] *See* rule 2a–7(c)(7)(ii)(B). Regardless of the extent of the deviation, rule 2a–7 imposes on the board of a money market fund a duty to take appropriate action whenever the board believes the extent of any deviation may result in material dilution or other unfair results to investors or current shareholders. Rule 2a–7(c)(7)(ii)(C). *See* 1983 Adopting Release, *supra* note 3, at nn. 51–52 and accompanying text.

[30] In September 1994, a series of a small institutional money market fund re-priced its shares below $1.00 as a result of loss in value of certain floating rate securities. The fund promptly announced that it would liquidate and distribute its assets to its shareholders. *See* 1996 Adopting Release, *supra* note 20, at n.162.

[31] We made similar observations last year. *See* Temporary Exemption for Liquidation of Certain Money Market Funds, Investment Company Act Release No. 28487, at text accompanying nn. 6–7 (Nov. 20, 2008) [73 FR 71919 (Nov. 26, 2008)] (''Rule 22e–3T Adopting Release'').

value of a money market fund when it experienced losses in one or more of its portfolio securities.

Since the late 1980s, fund managers from time to time have sought to prevent a money market fund from breaking the buck by voluntarily purchasing distressed portfolio securities from the fund, directly or through an affiliated person, at the higher of market price or amortized cost.[32] These events occurred irregularly and involved a limited number of funds.[33] In response to these events, the Commission tightened the risk-limiting conditions of the rule for taxable funds in 1991 and for tax exempt funds in 1996.[34] Among other things, we added diversification requirements to the rule, which limited the exposure of a fund to any one issuer of securities, thus reducing the consequences of a credit event affecting the value of a portfolio holding.[35] We repeatedly emphasized the responsibility of fund managers to manage, and fund boards to oversee that the fund is managed, in a manner consistent with the investment objective of maintaining a stable net asset value.[36]

In 2007, however, losses in the subprime mortgage markets adversely affected a significant number of money market funds. These money market funds had invested in asset backed commercial paper issued by structured investment vehicles (''SIVs''), which were off-balance sheet conduits sponsored mostly by certain large banks and money managers.[37] Although we understand that most SIVs had little exposure to sub-prime mortgages, they suffered severe liquidity problems and significant losses when risk-averse short-term investors (including money market funds), fearing increased exposure to liquidity risk and residential mortgages, began to avoid the commercial paper the SIVs issued.[38] Unable to roll over their short-term debt, SIVs were forced to liquidate assets to pay off maturing obligations and began to wind down operations.[39] In addition, NRSROs rapidly downgraded SIV securities, increasing downward price pressures already generated by these securities' lack of liquidity. The value of the commercial paper fell, which threatened to force several money market funds to break the buck.

Money market funds weathered this storm. In some cases, bank sponsors of SIVs provided support for the SIVs.[40] In other cases, money market fund affiliates voluntarily provided support to the funds by purchasing the SIV investments at their amortized cost or providing some form of credit support.[41] Money market funds also benefited from strong cash flows into money market funds, as investors fled from riskier markets. During the period from July 2007 to August 2008, more than $800 billion in new cash was invested in money market funds, increasing aggregate fund assets by one-third.[42] Eighty percent of these investments came from institutional investors.[43]

As financial markets continued to deteriorate in 2008, however, money market funds came under renewed stress. This pressure culminated the week of September 15, 2008 when the bankruptcy of Lehman Brothers Holdings Inc. (''Lehman Brothers'') led to heavy redemptions from about a dozen money market funds that held Lehman Brothers debt securities. On September 15, 2008, The Reserve Fund, whose Primary Fund series held a $785 million position in commercial paper issued by Lehman Brothers, began experiencing a run on its Primary Fund, which spread to the other Reserve funds. The Reserve funds rapidly depleted their cash to satisfy redemptions, and began offering to sell the funds' portfolio securities into the market, further depressing their valuations. Unlike the other money market funds that held Lehman Brothers debt securities (and SIV commercial paper), The Reserve Primary Fund ultimately had no affiliate with sufficient resources to support the $1.00 net asset value. On September 16, 2008, The Reserve Fund announced that as of that afternoon, its Primary Fund would break the buck and price its securities at $0.97 per share.[44] On September 22, 2008, in response to a request by The Reserve Fund, the Commission issued an order permitting the suspension of redemptions in certain Reserve funds, to permit their orderly liquidation.[45]

These events led many investors, especially institutional investors, to redeem their holdings in other prime money market funds and move assets to Treasury or government money market funds.[46] This trend was intensified by turbulence in the market for financial sector securities as a result of the bankruptcy of Lehman Brothers and the near failure of American International Group, whose commercial paper was

[32] These transactions implicate section 17(a) of the Investment Company Act, which prohibits an affiliated person of a fund or an affiliated person of such a person from knowingly purchasing a security from the fund, except in limited circumstances. Under section 17(b) of the Act, such persons can apply to the Commission for an exemption from these prohibitions. In 1996, the Commission adopted rule 17a–9, which permits affiliated persons of funds and affiliated persons of such persons to purchase distressed securities in funds' portfolios subject to certain conditions, without the need to first obtain an individual exemption. We are proposing certain amendments to rule 17a–9 in this release, as well as an amendment to rule 2a–7 that would require money market funds to notify us of any transactions under rule 17a–9. *See infra* Section II.H.

[33] *See* 1990 Proposing Release, *supra* note 22, at nn.16–18 and accompanying text; 1996 Adopting Release, *supra* note 20, at nn. 22–23 and accompanying text.

[34] *See* 1991 Adopting Release, *supra* note 20; 1996 Adopting Release, *supra* note 20.

[35] *See* rule 2a–7(c)(4).

[36] *See* 1983 Adopting Release, *supra* note 3, at nn. 41–42 and accompanying text; 1996 Adopting Release, *supra* note 20, at nn. 22–29 and accompanying text.

[37] *See* Neil Shah, *Money Market Funds Cut Exposure to Risky SIV Debt—S&P,* Reuters, Nov. 21, 2007, *available at http://www.reuters.com/article/bondsNews/idUSN2146813220071121.*

[38] We know of at least 44 money market funds that were supported by affiliates because of SIV investments. In many of these cases the affiliate support was provided in reliance on no-action assurances provided by Commission staff. Many of these no-action letters are available on our Web site. *See http://www.sec.gov/divisions/investment/im-noaction.shtml#money.* Unlike other asset backed commercial paper, SIV debt was not backed by an external liquidity provider.

[39] *See, e.g.,* Alistair Barr, *HSBC's Bailout Puts Pressure on Citi, ''Superfund,''* MarketWatch, Nov. 26, 2007, available at *http://www.marketwatch.com/story/hsbcs-35-bln-siv-bailout-puts-pressure-on-citi-superfund.*

[40] *See, e.g., id.*

[41] *See, e.g.,* Shannon D. Harrington & Christopher Condon, *Bank of America, Legg Mason Prop Up Their Money Funds,* Bloomberg, Nov. 13, 2007, available at *http://www.bloomberg.com/apps/news?pid=20601087&sid=aWWjLp8m3J1I&refer=home.* Under rule 17a–9, funds are not required to report to us all such transactions. *See infra* Section II.H.

[42] *See* ICI Report, *supra* note 6, at 49.

[43] *Id.*

[44] *See* Press Release, The Reserve Fund, A Statement Regarding The Primary Fund (Sept. 16, 2008). The Reserve Fund subsequently stated that the fund had broken the buck earlier in the day on September 16. *See* Press Release, The Reserve Fund, Important Notice Regarding Reserve Primary Fund's Net Asset Value (Nov. 26, 2008) (''The Fund is announcing today that, contrary to previous statements to the public and to investors, the Fund's net asset value per share was $0.99 from 11 a.m. Eastern time to 4 p.m. Eastern time on September 16, 2008 and *not* $1.00.'').

[45] *See* In the Matter of The Reserve Fund, Investment Company Act Release No. 28386 (Sept. 22, 2008) [73 FR 55572 (Sept. 25, 2008)] (order). Several other Reserve funds also obtained an order from the Commission on October 24, 2008 permitting them to suspend redemptions to allow for their orderly liquidation. *See* Reserve Municipal Money-Market Trust, et al., Investment Company Act Release No. 28466 (Oct. 24, 2008) [73 FR 64993 (Oct. 31, 2008)] (order).

[46] *See* U.S. Dollar Money Market Funds, *supra* note 17, at 72; BlackRock, The Credit Crisis: U.S. Government Actions and Implications for Cash Investors (Nov. 2008), *available at https://www2.blackrock.com/webcore/litService/search/getDocument.seam?venue=PUB_INS&ServiceName=PublicServiceView&ContentID=50824* (''The Credit Crisis''); Standard & Poor's, *Money Market Funds Tackle 'Exuberant Irrationality,'* Ratings Direct, Sept. 30, 2008, *available at http://www2.standardandpoors.com/spf/pdf/media/MoneyMarketFunds_Irrationality.pdf.*

held by many prime money market funds.

During the week of September 15, 2008, investors withdrew approximately $300 billion from prime (taxable) money market funds, or 14 percent of the assets held in those funds.[47] Most of the heaviest redemptions were from institutional funds, which depleted cash positions and threatened to force a fire sale of portfolio securities that would have placed widespread pressure on fund share prices.[48] Fearing further redemptions, money market fund (and other cash) managers began to retain cash rather than invest in commercial paper, certificates of deposit or other short-term instruments.[49] In the final two weeks of September 2008, money market funds reduced their holdings of top-rated commercial paper by $200.3 billion, or 29 percent.[50]

As a consequence, short-term markets seized up, impairing access to credit in short-term private debt markets.[51] Some commercial paper issuers were only able to issue debt with overnight maturities.[52] The interest rate premium (spread) over three-month Treasury bills paid by issuers of three-month commercial paper widened significantly from approximately 25–100 basis points before the September 2008 market events to approximately 200–350 basis points, and issuers were exposed to the costs and risks of having to roll over increasingly large amounts of commercial paper each day.[53] Many money market fund sponsors took extraordinary steps to protect funds' net assets and preserve shareholder liquidity by purchasing large amounts of securities at the higher of market value or amortized cost and by providing capital support to the funds.[54]

On September 19, 2008, the U.S. Department of the Treasury and the Board of Governors of the Federal Reserve System (''Federal Reserve Board'') announced an unprecedented market intervention by the federal government in order to stabilize and provide liquidity to the short-term markets. The Department of the Treasury announced its Temporary Guarantee Program for Money Market Funds (''Guarantee Program''), which temporarily guaranteed certain investments in money market funds that decided to participate in the program.[55] The Federal Reserve Board announced the creation of its Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility (''AMLF''), through which it extended credit to U.S. banks and bank holding companies to finance their purchases of high-quality asset backed commercial paper from money market funds.[56] In addition, the Federal Reserve Board's Commercial Paper Funding Facility (''CPFF'') provided support to issuers of commercial paper through a conduit that purchased commercial paper from eligible issuers, although the CPFF did not purchase commercial paper from money market funds.[57] The Commission and its staff worked closely with the Treasury Department and the Federal Reserve Board to help design these programs, most of which relied in part on rule 2a–7 to tailor the program and/or condition the terms of a fund's participation in the program, and we also assisted in administering the Guarantee Program.[58] Our staff also

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[47] *See* ICI Report, *supra* note 6, at 62 (analyzing data from iMoneyNet); *see also* Investment Company Institute, *Money Market Mutual Fund Assets Historical Data,* Apr. 30, 2009, *available at http://www.ici.org/pdf/mm_data_2009.pdf* (''ICI Mutual Fund Historical Data'').

[48] *See* ICI Mutual Fund Historical Data, *supra* note 47.

[49] *See* Philip Swagel, ''The Financial Crisis: An Inside View,'' Brookings Papers on Economic Activity, at 31 (Spring 2009) (conference draft), available at *http://www.brookings.edu/economics/bpea/~/media/Files/Programs/ES/BPEA/2009_spring_bpea_papers/2009_spring_bpea_swagel.pdf.*

[50] *See* Christopher Condon & Bryan Keogh, *Funds' Flight from Commercial Paper Forced Fed Move,* Bloomberg, Oct. 7, 2008, *available at http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a5hvnKFCC_pQ.*

[51] *See Minutes of the Federal Open Market Committee,* Federal Reserve Board, Oct. 28–29, 2008, at 5, *available at http://www.federalreserve.gov/monetarypolicy/files/fomcminutes20081029.pdf* (''*FRB Open Market Committee Oct. 28–29 Minutes*'') (stating that following The Reserve Fund's announcement that the Primary Fund would break the buck, ''risk spreads on commercial paper rose considerably and were very volatile'' and ''[c]onditions in short-term funding markets improved somewhat following the announcement of * * * a number of mutual initiatives by the Federal Reserve and the Treasury to address the pressures on money market funds and the commercial paper market''). *See also* Press Release, Federal Reserve Board Announces Creation of the Commercial Paper Funding Facility (CPFF) to Help Provide Liquidity to Term Funding Markets (Oct. 7, 2008), *available at http://www.federalreserve.gov/newsevents/press/monetary/20081007c.htm* (''The commercial paper market has been under considerable strain in recent weeks as money market mutual funds and other investors, themselves often facing liquidity pressures, have become increasingly reluctant to purchase commercial paper, especially at longer-dated maturities. As a result, the volume of outstanding commercial paper has shrunk, interest rates on longer term commercial paper have increased significantly, and an increasingly high percentage of outstanding paper must now be refinanced each day. A large share of outstanding commercial paper is issued or sponsored by financial intermediaries, and their difficulties placing commercial paper have made it more difficult for those intermediaries to play their vital role in meeting the credit needs of businesses and households.'').

[52] *See* Matthew Cowley, *Burnt Money Market Funds Stymie Short-Term Debt,* Dow Jones International News, Oct. 1, 2008; Anusha Shrivastava, *Commercial-Paper Market Seizes Up,* The Wall Street Journal, Sept. 19, 2008, at C2.

[53] *See* Federal Reserve Board data, *available at http://www.frbatlanta.org/econ_rd/macroblog/102808b.jpg* (charting three-month commercial paper spreads over three-month Treasury bill); *see also* Federal Reserve Board Chairman Ben S. Bernanke, Testimony before the Committee on Financial Services, U.S. House of Representatives (Nov. 18, 2008), *available at http://www.federalreserve.gov/newsevents/testimony/bernanke20081118a.htm.*

[54] Commission staff provided no-action assurances allowing 100 money market funds in 18 different fund complexes to enter into such arrangements during the period from September 16, 2008 to October 1, 2008. *See, e.g., http://www.sec.gov/divisions/investment/im-noaction.shtml#money.*

[55] *See* Press Release, U.S. Department of the Treasury, Treasury Announces Guaranty Program for Money Market Funds (Sept. 19, 2008), *available at http://www.treas.gov/press/releases/hp1147.htm.* The Program insures investments in money market funds, to the extent of their shareholdings as of September 19, 2008, if the fund has chosen to participate in the Program. The Guarantee Program is due to expire on September 18, 2009. We adopted, on an interim final basis, a temporary rule, rule 22e–3T, to facilitate the ability of money market funds to participate in the Guarantee Program. The rule permits a participating fund to suspend redemptions if it breaks a buck and liquidates under the terms of the Program. *See* Rule 22e–3T Adopting Release, *supra* note 31. The temporary rule will expire on October 18, 2009. We discuss this rule in more detail in *infra* Section II.I.

[56] *See* Press Release, Federal Reserve Board, Federal Reserve Board Announces Two Enhancements to Its Programs to Provide Liquidity to Markets (Sept. 19, 2008), *available at http://www.federalreserve.gov/newsevents/press/monetary/20080919a.htm.* The AMLF will expire on February 1, 2010, unless extended. *See* Press Release, Federal Reserve Board, Federal Reserve Announces Extensions of and Modifications to a Number of Its Liquidity Programs (June 25, 2009), *available at http://www.federalreserve.gov/newsevents/press/monetary/20090625a.htm* (''2009 Federal Reserve Extension and Modification Announcement'').

[57] *See* Press Release, Federal Reserve Board, Board Announces Creation of the Commercial Paper Funding Facility (CPFF) to Help Provide Liquidity to Term Funding Markets (Oct. 7, 2008), *available at http://www.federalreserve.gov/newsevents/press/monetary/20081007c.htm.* At one point the Federal Reserve had purchased about one-fifth of all commercial paper outstanding in the U.S. market. *See* Bryan Keogh, *GE Leads Commercial Paper ''Test'' as Fed's Buying Ebbs,* Bloomberg, Jan. 27, 2009, *available at http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aHWA87Aa2aQQ.* The CPFF will expire on February 1, 2010, unless extended. *See* 2009 Federal Reserve Extension and Modification Announcement, *supra* note 56. Although the CPFF did not directly benefit money market funds, it did indirectly benefit them by stabilizing the commercial paper market. *See, e.g.,* Richard G. Anderson, *The Success of the CPFF?* (Economic Synopses No. 18, Federal Reserve Bank of St. Louis, 2009), at 2, *available at http://www.research.stlouisfed.org/publications/es/09/ES0918.pdf.*

[58] *See, e.g.,* Guarantee Agreement that money market funds participating in the Treasury's Guarantee Program were required to sign, at 2, 10, *available at http://www.treas.gov/offices/domestic-finance/key-initiatives/money-market-docs/Guarantee-Agreement_form.pdf* (under which money market funds were required to state that they operated in compliance with rule 2a–7 to be eligible to initially participate in the program and must continue to comply with rule 2a–7 to continue to

worked with sponsors of money market funds to provide regulatory relief they requested to participate fully in these programs.[59]

These steps helped to stanch the tide of redemptions from institutional prime money market funds,[60] and provided liquidity to money market funds that held asset backed commercial paper. Commercial paper markets remained illiquid, however, and, as a result, money market funds experienced significant problems pricing portfolio securities. Institutional as well as retail money market funds with little redemption activity and no distressed securities reported to our staff that they nevertheless faced the prospect of breaking the buck as a consequence of their reliance on independent pricing services that reported prices based on models with few reliable inputs. The Commission's Office of Chief Accountant and the Financial Accounting Standards Board provided funds and others guidance on determining fair value of securities in turbulent markets,[61] but it appeared that fund boards remained reluctant to deviate from the prices received from their vendors. On October 10, 2008, our Division of Investment Management issued a letter agreeing not to recommend enforcement action if money market funds met the ''shadow pricing'' obligations of rule 2a–7 by pricing certain of their portfolio securities with a remaining final maturity of less than 60 days by reference to their amortized cost.[62]

Over the four weeks after The Reserve Fund's announcement, assets in institutional prime money market funds shrank by 30 percent, or approximately $418 billion (from $1.38 trillion to $962 billion).[63] No money market fund other than The Reserve Primary Fund broke the buck, although money market fund sponsors or their affiliated persons in many cases committed extraordinary amounts of capital to support the $1.00 net asset value per share. Our staff estimates that during the period from August 2007 to December 31, 2008, almost 20 percent of all money market funds received some support from their money managers or their affiliates.[64]

During this time period, short-term credit markets became virtually frozen as market participants hoarded cash and generally refused to lend on more than an overnight basis.[65] Interest rate spreads increased dramatically.[66] After shrinking to historically low levels as credit markets boomed in the mid-2000s, interest rate spreads surged upward in the summer of 2007 and peaked after the bankruptcy of Lehman Brothers in September 2008.[67] Money market funds shortened the weighted average maturity of their portfolios to be better positioned in light of increased liquidity risk to the funds.[68]

Although the crisis money markets faced last fall has abated, the problems have not disappeared. Today, while interest rate spreads have recently declined considerably, they remain above levels prior to the crisis,[69] and short-term debt markets remain fragile.[70] Although the average weighted average maturity of taxable money market funds (as a group) had risen to 53 days as of the week ended June 16, 2009,[71] we understand that the long-term securities that account for the longer weighted average maturity are not commercial paper and corporate medium term notes (as they were before the crisis), but instead are predominantly government securities, which suggests that money market funds may still be concerned about credit risk.

The Treasury Guarantee Program has been extended twice, but is set to expire on September 18, 2009.[72] Programs

participate in the program); *see also http://www.sec.gov/divisions/investment/mmtempguarantee.htm.*

[59] *See* Investment Company Institute, SEC Staff No-Action Letter (Sept. 25, 2008) (relating to the AMLF); Investment Company Institute, SEC Staff No-Action Letter (Oct. 8, 2008) (relating to the Guarantee Program). These no-action letters are available on our Web site at *http://www.sec.gov/divisions/investment/im-noaction.shtml#money.*

[60] During the week ending September 18, 2008, taxable institutional money market funds experienced net outflows of $165 billion. *See Money Fund Assets Fell to $3.4T in Latest Week,* Associated Press, Sept. 18, 2008. Almost $80 billion was withdrawn from prime money market funds even after the announcement of the Guarantee Program on September 19, 2008. *See* Diana B. Henriques, *As Cash Leaves Money Funds, Financial Firms Sign Up for U.S. Protection,* N.Y. Times, Oct. 2, 2008, at C10. However, by the end of the week following the announcement, net outflows from taxable institutional money market funds had ceased. *See Money Fund Assets Fell to $3.398T in Latest Week,* Associated Press, Sept. 25, 2008.

[61] *See* Press Release No. 2008–234, Securities and Exchange Commission, Office of the Chief Accountant and FASB Staff Clarifications on Fair Value Accounting (Sept. 30, 2008), *available at http://www.sec.gov/news/press/2008/2008-234.htm.*

[62] Investment Company Institute, SEC Staff No-Action Letter (Oct. 10, 2008). This letter is available on our Web site at *http://www.sec.gov/divisions/investment/noaction/2008/ICI101008.htm.* The letter by its terms did not apply, however, to shadow pricing if particular circumstances (such as the impairment of the creditworthiness of the issuer) suggested that amortized cost was not appropriate. The staff position also was limited to portfolio securities that were ''first tier securities'' under rule 2a–7 and that the fund reasonably expected to hold to maturity. The letter applied to shadow pricing procedures through January 12, 2009.

[63] On September 10, 2008, six days prior to The Reserve Fund's announcement, approximately $1.38 trillion was invested in institutional prime (taxable) money market funds. *See* ICI Mutual Fund Historical Data, *supra* note 47. On October 8, 2008, approximately $962 billion was invested in those funds. *See id.* In addition, between September 10 and September 17, the assets of these funds fell by approximately $193 billion. *See id.*

[64] This estimate is based on no-action requests and other conversations with our staff during this time period.

[65] The Credit Crisis, *supra* note 46, at 1 (''After experiencing more than $400 billion in outflows over a short period of time, money funds had little appetite for commercial paper; even quality issuers discovered they could not access the commercial paper market * * *.'').

[66] An interest rate spread measures the difference in interest rates of debt instruments with different risk. *See* Markus K. Brunnermeier, *Deciphering the Liquidity and Credit Crunch 2007–2008,* 23 J. Econ. Perspectives 77, 85, Winter 2009 (''Brunnermeier'').

[67] *See id.*; David Oakley, *LIBOR Hits Record Low as Credit Fears Ease,* Fin. Times, May 5, 2009. For example, the ''TED'' spread (the difference between the risk-free U.S. Treasury Bill rate and the riskier London Interbank Offering Rate (''LIBOR'')), normally around 50 basis points, reached a high of 463 basis points on October 10, 2008. *See* David Serchuk, *Banks Led by the TED,* Forbes, Jan. 12, 2009.

[68] Taxable money market fund average weighted average maturities shortened to 40–42 days during October 2008 from 45–46 days shortly prior to this period based on analysis of data from the iMoneyNet Money Fund Analyzer database.

[69] The TED spread was 52 basis points on May 29, 2009. The LIBOR–OIS spread (the difference between three-month dollar London Interbank Offered Rate and the overnight index swap rate) was 45 basis points. *See* Lukanyo Mnyanda, *Libor Declines for Second Day on Signs Economic Slump is Easing,* Bloomberg, May 29, 2009, *available at http://www.bloomberg.com/apps/news?pid=20670001&sid=agpZArg2paJE.* Prior to the start of the financial turbulence in the summer of 2007, the TED spread averaged approximately 25–50 basis points and the three-month LIBOR–OIS spread averaged 7–9 basis points. *See* historical chart of TED spread *available at http://www.bloomberg.com/apps/cbuilder?ticker1=.TEDSP%3AIND;* Simon Kwan, *Behavior of LIBOR in the Current Financial Crisis,* FRBSF Economic Letter (Federal Reserve Bank of San Francisco), Jan. 23, 2009, at 2–3, *available at http://www.frbsf.org/publications/economics/letter/2009/el2009-04.pdf.*

[70] *See* Bryan Keogh, John Detrixhe & Gabrielle Coppola, *Coca-Cola Flees Commercial Paper for Safety in Bonds,* Bloomberg, Mar. 17, 2009, *available at http://www.bloomberg.com/apps/news?pid=newsarchive&sid=atxKQSJUp6RE* (noting that certain companies are issuing long-term debt to replace commercial paper to avoid the risk of not being able to roll over their commercial paper, given the instability in short-term credit markets); Michael McKee, *Fed Credit Has Stabilized Markets, Not Fixed Them, Study Says,* Bloomberg, Mar. 6, 2008, *available at http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aRGBZuGYE78Y.*

[71] This information is based on analysis of data from the iMoneyNet Money Fund Analyzer database.

[72] *See* Press Release, U.S. Department of the Treasury, Treasury Announces Extension of Temporary Guarantee Program for Money Market Funds (Nov. 24, 2008), *available at http://www.treas.gov/press/releases/hp1290.htm;* Press Release, U.S. Department of the Treasury, Treasury Announces Extension of Temporary Guarantee Program for Money Market Funds (Mar. 31, 2009),

Continued

established by the Federal Reserve Board to support liquidity in the short-term market are set to expire early next year.[73] Total money market fund assets have continued to grow and now amount to approximately $3.8 trillion.[74] However, the composition of those assets has changed dramatically. Between September 10 and October 8, 2008, government money market fund assets increased by about 47 percent compared to a decrease of about 21 percent in taxable prime money market fund assets.[75] Since that time, prime money market fund assets have begun to grow again, although they remain below pre-September 2008 levels and government money market fund assets remain elevated.[76]

Finally, The Reserve Primary Fund has yet to distribute all of its remaining assets to shareholders, many of whom were placed in financial hardship as a result of losing access to their investments.[77] The dissolution of the fund has been affected by several factors, including operational difficulties and lack of liquidity in the secondary markets, and by legal uncertainties over the disposition of the remaining assets. We recently instituted an action in federal court seeking to ensure that the liquidation is effected on a fair and equitable basis,[78] and propose in this release regulatory changes designed to protect investors in a fund that breaks a dollar in the future.[79]

II. Discussion

The severe problems experienced by money market funds since the fall of 2007 and culminating in the fall of 2008 have prompted us to review our regulation of money market funds. Based on that review, including our experience with The Reserve Fund, we today are proposing for public comment a number of significant amendments to rule 2a–7 under the Investment Company Act.

In formulating these proposals, Commission staff has consulted extensively with other members of the President's Working Group on Financial Markets, and in particular the Department of Treasury and the Federal Reserve Board, which provided support to money market funds and the short-term debt markets last fall, and which continue to administer programs from which money market funds and their shareholders benefit. We have consulted with managers of money market funds and other experts to develop a deeper understanding of the stresses experienced by funds and the impact of our regulations on the readiness of money market funds to cope with market turbulence and satisfy heavy demand for redemptions. In March, we received an extensive report from a ''Money Market Working Group'' assembled by the Investment Company Institute (''ICI Report''), which recommended a number of changes to our rule 2a–7 that it believes could improve the safety and oversight of money market funds.[80] We have also drawn from our experience as a regulator of money market funds under rule 2a–7 for more than 25 years and particularly since autumn 2007.

Our proposals, which we discuss in more detail below, are designed to increase the resilience of money market funds to market disruptions such as those that occurred last fall. The proposed rules would reduce the vulnerability of money market funds to breaking the buck by, among other things, improving money market funds' ability to satisfy significant demands for redemptions. If a particular fund does break the buck and determines to liquidate, the proposed rules would facilitate the orderly liquidation of the fund in order to protect the interests of all fund shareholders. These changes together should make money market funds (collectively) less susceptible to a run by diminishing the chance that a money market fund will break a dollar and, if one does, provide a means for the fund to orderly liquidate its assets. Finally, our proposals would improve our ability to oversee money market funds by requiring funds to submit to us current portfolio information.

Our proposals represent the first step in addressing issues we believe merit immediate attention.[81] Throughout this release, we ask comment on other possible regulatory changes aimed at further strengthening the stability of money market funds. In addition, we ask comment on some more far-reaching changes that could transform the business and regulatory model on which money market funds have operated for more than 30 years, including whether money market funds should move to a floating net asset value.[82] We expect to benefit from the comments we receive before deciding whether to propose further changes.

A. Portfolio Quality

To limit the amount of credit risk to which money market funds can be exposed, rule 2a–7 limits them to investing in securities that a fund's board of directors (or its delegate pursuant to written guidelines) determines present minimal credit risks.[83] In addition, securities must at the time of acquisition be ''eligible securities,'' which means in part that they must have received the highest or second highest short-term debt ratings from the ''requisite NRSROs.''[84]

available at http://www.treas.gov/press/releases/tg76.htm.

[73] The AMLF and the CPFF will expire on February 1, 2010. *See* Press Release, Federal Reserve (June 25, 2009), *available at http://www.federalreserve.gov/newsevents/press/monetary/20090625a.htm.* The use of the AMLF peaked on October 1, 2008, with holdings of $152.1 billion. *See* Federal Reserve Board, Statistical Release H.4.1: Factors Affecting Reserve Balances (Oct. 2, 2008), *available at http://www.federalreserve.gov/releases/h41/20081002.* AMLF holdings as of April 29, 2009 stood at $3.699 billion. *See* Federal Reserve Board, Statistical Release H.4.1: Factors Affecting Reserve Balances (Apr. 30, 2009), *available at http://www.federalreserve.gov/releases/h41/20090430.*

[74] *See* ICI Trends, *supra* note 4.

[75] *See* ICI Mutual Fund Historical Data, *supra* note 47.

[76] *See id.*

[77] The Reserve Primary Fund did not make an initial partial pro rata distribution of assets until October 30, 2008. *See* Press Release, The Reserve Fund, Reserve Primary Fund Makes Initial Distribution of $26 Billion to Primary Fund Shareholders (Oct. 30, 2008). The fund has distributed approximately 90 percent of its assets. *See* Press Release, The Reserve Fund, Court Issues Order Setting Objection and Hearing Dates on Securities and Exchange Commission's Proposed Plan for Distribution of Reserve Primary Fund's Assets (June 15, 2009).

[78] *See SEC* v. *Reserve Management Co., Inc., et al.,* Litigation Release No. 21025 (May 5, 2009), *available at http://www.sec.gov/litigation/litreleases/2009/lr21025.htm.* We note that we also have filed fraud charges against several entities and individuals who operate The Reserve Primary Fund alleging that they failed to provide key material facts to investors and trustees about the fund's vulnerability as Lehman Brothers sought bankruptcy protection. *See id.*

[79] *See infra* Section II.I.

[80] ICI Report, *supra* note 6.

[81] We note that we accomplished the reforms of money market fund regulation we initiated in 1990 in two steps. *See* 1990 Proposing Release, *supra* note 22 (taxable money market funds); Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 19959 (Dec. 17, 1993) [58 FR 68585 (Dec. 28, 1993)] (tax exempt money market funds) (''1993 Proposing Release'').

[82] *See infra* Section III.A.

[83] Rule 2a–7(c)(3)(i). Although rule 2a–7 refers to determinations to be made by a fund or its board, many of these determinations under the rule may be delegated to the investment adviser or fund officers pursuant to written guidelines that the board establishes and oversees to assure that the applicable procedures are being followed. Rule 2a–7(e).

[84] Rule 2a–7(a)(10)(i) (defining ''eligible security''). If the securities are unrated, they must be of comparable quality. Rule 2a–7(a)(10)(ii). The term ''requisite NRSROs'' is defined in paragraph (a)(21) of the rule to mean ''(i) Any two NRSROs that have issued a rating with respect to a security or class of debt obligations of an issuer; or (ii) If only one NRSRO has issued a rating with respect to such security or class of debt obligations of an issuer at the time the fund Acquires the security, that NRSRO.'' Thus, a security can satisfy the ratings requirement in one of four ways: (1) It is rated in the same (top two) category by any two NRSROs; (2) if it is rated by at least two NRSROs in either of the top two categories, but no two

Because of the additional credit risk that generally is represented by securities rated in the second highest, rather than the highest, NRSRO rating category, a taxable money market fund may not invest more than five percent of its total assets in ''second tier securities.'' [85] Tax exempt money market funds are limited in the same manner only with respect to second tier ''conduit securities,'' *i.e.,* municipal securities backed by a private issuer.[86]

We are also proposing a change to the provisions of rule 2a–7 that limit money market funds to investing in high quality securities. We propose to generally limit money market fund investments to securities rated in the highest NRSRO ratings category. In addition, we are seeking comment on whether to modify provisions of the rule that incorporate minimum ratings by NRSROs to reflect changes made to the federal securities laws by the Credit Rating Agency Reform Act of 2006 (''Rating Agency Reform Act'').[87]

1. Second Tier Securities

We propose to amend rule 2a–7 to allow money market funds to invest only in first tier securities. Under the proposed amendments, money market funds could ''acquire'' only ''eligible securities,'' which would be re-defined to include securities receiving only the highest (rather than the highest two) short-term debt ratings from the ''requisite NRSROs.'' [88] Funds would not have to immediately dispose of a security that was downgraded by the requisite NRSROs but, under existing provisions of rule 2a–7, the fund would have to dispose of the security ''as soon as practicable consistent with achieving an orderly disposition of the security'' unless the fund's board of directors finds that such disposal would not be in the best interest of the fund.[89]

We have considered previously the extent to which money market funds should be permitted to invest in second tier securities. In 1991, following distress at several money market funds that held defaulted commercial paper, the Commission, among other things, limited a taxable money market fund's total investment in second tier securities to five percent of the fund's portfolio assets and limited the investment in any particular issuer of second tier securities to no more than the greater of one percent of the fund's portfolio assets or $1 million.[90] At that time, commenters in favor of eliminating money market funds' investment in second tier securities argued that such securities may undergo a rapid deterioration and thus may pose risks to the fund holding such securities as well as to investor confidence in money market funds in general.[91] On the other hand, issuers of second tier securities urged the Commission not to limit money market funds' holdings of second tier securities, arguing that the Commission's concerns regarding the creditworthiness of second tier securities were misplaced and that restrictions would raise issuers' borrowing costs and discourage money market funds from holding any second tier securities.[92] Based principally on the potential risk to money market funds of holding second tier securities, we adopted the five percent and one percent limitations to limit (but not eliminate) exposure of money market funds to second tier securities and any one issuer of second tier securities.[93]

Second tier securities were not directly implicated in the recent strains on money market funds. The ICI's Money Market Working Group expressed concern to us, however, that these securities may present an ''imprudent'' risk to the stable value of money market funds because they present ''weaker credit profiles, smaller overall market share, and smaller issuer program sizes * * *'' [94] Our examination of the data discussed below suggests support for their recommendation that money market funds no longer be permitted to invest in these securities.[95]

Compared to the market for first tier securities, the market for second tier securities is relatively small. As of June 24, 2009, there was $1082.5 billion in rule 2a–7-eligible commercial paper outstanding, consisting of $1035.8 billion (95.7 percent) of first tier and $46.7 billion (4.3 percent) of second tier.[96] The size of the second tier market has remained consistently small over time.[97]

In addition, second tier securities present potentially substantially more risk than first tier securities. As the following chart shows, during the market disruptions of last fall, second tier securities experienced significantly wider credit spreads than first tier securities.[98]

NRSROs assign the same rating, the lower rating is assigned; (3) it is rated by only one NRSRO, in one of the top two categories; or (4) it is an unrated security that the board or its delegate determines to be of comparable quality to securities satisfying the rating criteria. The terms ''rated security'' and ''unrated security'' are defined in paragraphs (a)(19) and (a)(28) of rule 2a–7, respectively.

[85] Rule 2a–7(c)(3)(ii)(A). *See also* rule 2a–7(a)(10) (defining ''eligible security''), (a)(22) (defining ''second tier security'' as any eligible security that is not a first tier security), and (a)(12) (defining ''first tier security'' as, among other things, any eligible security that, if rated, has received the highest short-term term debt rating from the requisite NRSROs or, if unrated, has been determined by the fund's board of directors to be of comparable quality). *See also* 1990 Proposing Release, *supra* note 22, at Section II.1.b.

[86] Rule 2a–7(c)(3)(ii)(B). *See also* rule 2a–7(a)(7) (defining ''conduit security'').

[87] Credit Rating Agency Reform Act of 2006, Pub. L. 109–291, 120 Stat. 1327.

[88] *See* rule 2a–7(a)(1) (defining acquisition (or acquire) as any purchase or subsequent rollover, but not including the failure to exercise a demand feature); proposed rule 2a–7(a)(11)(iii) (defining eligible security); proposed rule 2a–7(c)(3) (portfolio quality). Because eligible securities would no longer be divided into first tier and second tier securities, both of those terms would be deleted from the rule, as would provisions relating specifically to second tier securities. *See* rule 2a–7(a)(12), (a)(22), (c)(3)(ii), (c)(4)(i)(C), (c)(4)(iii)(B), (c)(6)(i)(A), and (c)(6)(i)(C). We would therefore amend the definition of eligible security to require that securities receive ''the highest,'' as opposed to ''one of the two highest'' short-term rating categories, as the current definition provides, and delete other references in the rule to the second highest rating category. *See* proposed rule 2a–7(a)(11)(iii). The definition of eligible security also would be expanded to include two types of securities, securities issued by a money market fund and ''Government securities,'' that were formerly part of the definition of first tier securities. *See* proposed rule 2a–7(a)(11)(i) and (ii); *see also* rule 2a–7(a)(14) (defining Government security). Unrated securities determined by the board of directors of the fund or its delegate to be of comparable quality also would still be eligible securities. *See* proposed rule 2a–7(a)(11)(iv).

[89] *See* rule 2a–7(c)(6)(ii); proposed rule 2a–7(c)(7)(ii).

[90] *See* rule 2a–7(c)(3)(ii)(A), (c)(4)(i)(C)(1). *See also* 1991 Adopting Release, *supra* note 20.

[91] *See* 1991 Adopting Release, *supra* note 20, at n.36 and accompanying text. Most commenters representing the mutual fund industry supported or did not oppose the limitations we proposed. *Id.* at n.35 and accompanying text.

[92] *See id.* at text following n.35.

[93] *See id.* at n.35–37 and accompanying text; 1990 Proposing Release, *supra* note 22, at n.33 and accompanying text.

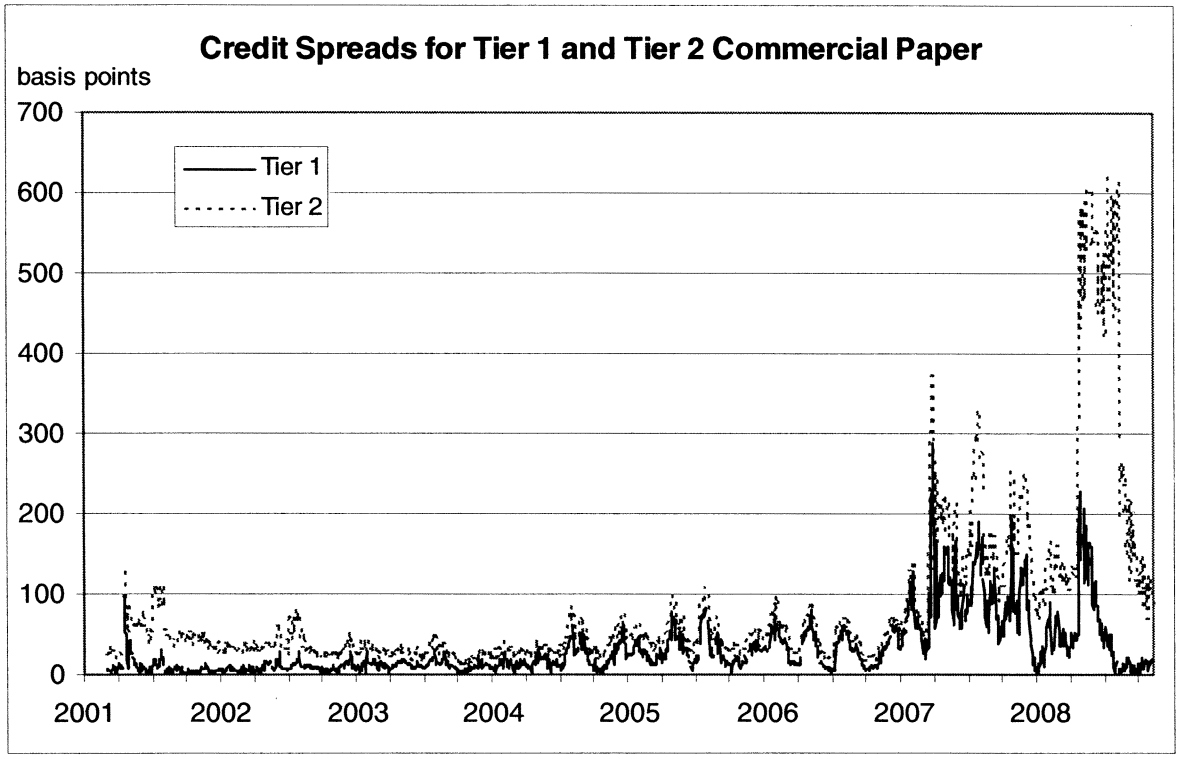
[94] ICI Report, *supra* note 6, at 101.

[95] *Id.* at 100.

[96] *See* Federal Reserve Board Commercial Paper Outstanding Chart, *available at http://www.federalreserve.gov/releases/cp/outstandings.htm* (showing weekly levels of rule 2a–7-eligible commercial paper outstanding).

[97] *See* Federal Reserve Board Commercial Paper Data Download Program, *available at http://www.federalreserve.gov/DataDownload/Choose.aspx?rel=CP* (select year-end outstandings from the preformatted data package menu and follow the instructions for download). Over the last eight years, the market for second tier securities on average has represented only 4.6 percent of the rule 2a–7-eligible commercial paper market.

[98] *See* Federal Reserve Board Commercial Paper Rates Chart, *available at http://www.federalreserve.gov/releases/cp/default.htm. See also* Frank J. Fabozzi, The Handbook of Fixed Income Securities, at 4 (7th ed. 2005) (''Default risk or credit risk refers to the risk that the issuer of a bond may be unable to make timely payment of principal or interest payments * * *. The spread between Treasury securities and non-Treasury securities that are identical in all respects except for quality is referred to as a *credit spread* or *quality spread*.'').



Source of Data: Federal Reserve, available at http://www.federalreserve.gov/DataDownload/Choose.aspx?rel=CP.

Second tier securities as an asset class also are of weaker credit quality in terms of interest coverage ratios, debt coverage ratios, and debt to equity ratios.[99] These data strongly suggest that second tier securities generally present additional risks to a money market fund. This is a conclusion that may have been reached by money market fund managers, most of which (as described below) do not invest in second tier securities. In light of the risks that second tier securities generally present to money market funds, and the consequences to funds and fund investors of breaking a dollar, we are proposing to limit funds to investing in first tier securities. We believe such a limitation would make it less likely that a money market fund would hold a problematic security, or a security that would lose significant value as a result of market disruptions.

It does not appear that amending rule 2a–7 to eliminate money market funds' ability to acquire second tier securities would be materially disruptive to funds. Prior to our amendments to rule 2a–7 in 1991, non-government money market funds held more than eight percent of their assets in second tier securities.[100] After we restricted the amount of second tier securities money market funds could buy, the funds soon reduced their holdings to almost zero.[101] Our staff's review of money market fund portfolios in September 2008 found that second tier securities represented only 0.4 percent of the $3.6 trillion held by the funds (approximately $14.6 billion).

We request comment on our proposal to eliminate the ability of money market funds to invest in second tier securities. What would be the impact on funds? Would the benefit of reducing credit risk by eliminating the ability of money market funds to invest in second tier securities outweigh any potential diversification benefits that second tier securities may otherwise provide to money market funds? What, if any, diversification benefits do money market funds currently receive from investing in second tier securities? Would this change have a significant effect on yields?

Would there be a proportionately greater impact of eliminating second tier securities on smaller or less established money market funds or on particular types of funds (*e.g.,* single-state tax exempt funds)? If the proposal to eliminate funds' ability to hold second tier securities is adopted, what transition period should we provide money market funds to dispose of their existing second tier holdings in an orderly manner? Should we allow funds that hold second tier securities after the amended rule becomes effective to continue to hold such securities until maturity?

Are there alternatives to eliminating entirely the ability of a money market fund to invest in second tier securities? For example, should money market funds instead be limited to investing in second tier securities (i) with a maximum maturity of, for example, 45 days, or (ii) as a smaller portion of fund assets, such as two percent of the total assets, or (iii) a combination of both? A security with a shorter maturity presents less credit risk to a fund (because the exposure is shorter) and less liquidity risk (because cash will be available sooner). Would such an approach address, or at least partly address, the concerns raised by the ICI Report and in this Release? [102] Could additional credit risk analysis or other procedures be imposed with respect to second tier securities to address these concerns?

[99] *See* Standard & Poor's, CreditStats: 2007 Adjusted Key U.S. Industrial and Utility Financial Ratios, at 6, Table 3 (Sept. 10, 2008), *available at http://www2.standardandpoors.com/spf/pdf/fixedincome/CreditStats_2007_Adjusted_Key_Financial_Ratios.pdf* (showing A–2 rated commercial paper had EBIT interest coverage of 7.2x, free operating cash flow to debt of 16.7%, and debt to debt plus equity of 45.1%, compared to A–1 averages of 11.5x, 31.3%, and 37.1%, respectively, represented as three-year (2005–2007) averages).

[100] *See* Crabbe & Post, *supra* note 15, at 11, Table 2.

[101] *See id.* at 11–12.

[102] *See* ICI Report, *supra* note 6, at 100–101.

2. Eligible Securities

a. Use of NRSROs

As discussed above, rule 2a–7 currently requires a money market fund to limit its portfolio investments to eligible securities, *i.e.,* short-term securities that at the time of acquisition have received ratings from the ''requisite NRSROs'' in one of the two highest short-term debt rating categories and securities that are comparable to rated securities.[103]

A determination that a security is an eligible security as a result of its NRSRO ratings is a necessary but not sufficient finding in order for a fund to acquire the security.[104] References to NRSRO ratings in rule 2a–7 and other regulations were designed to provide a clear reference point to regulators and market participants. The reliability of credit ratings, however, has been questioned, in particular in light of developments during the recent financial crisis. As a result, there have been calls to produce higher quality ratings. Last year, we proposed to eliminate the use of NRSRO ratings in rules under the Investment Company Act, including rule 2a–7, and instead to rely solely on the fund manager's credit risk determination.[105] In 2003, in a concept release seeking comment on various issues relating to credit rating agencies, we also asked whether credit ratings should be used as a minimum objective standard in rule 2a–7. Most commenters who addressed the specific question in 2003 supported retaining the ratings requirement in rule 2a–7.[106] One commenter asserted that ''[t]he combination of this objective test with the 'subjective test' (credit analysis performed by the adviser to the money market fund) provides an important complementary rating structure under Rule 2a–7.'' [107] Similarly, in our proposal last year, a substantial majority of commenters disagreed with the proposed elimination of the ratings requirement.[108] The ICI Report summed up the views of many of these commenters, asserting that elimination of the NRSRO ratings' ''floor * * * would remove an important investor protection from Rule 2a–7, introduce new uncertainties and risks, and abandon a regulatory framework that has proven to be highly successful.'' [109] A few commenters supported removing the ratings requirement in 2003 and as proposed in 2008, however. One of these commenters noted that ''one of the core causes of the sub-prime crisis was dependence on inaccurate and unsupportable credit ratings.'' [110]

In light of recent market developments, we request that commenters again address whether or not the approach we proposed last year would provide safeguards with respect to credit risk that are comparable to the continued inclusion of NRSRO references in the rule. What other alternatives could we adopt to encourage more independent credit risk analysis and meet the regulatory objectives of rule 2a–7's requirement of NRSRO ratings? Are there additional factors that we should consider with respect to last year's proposal? Should we consider establishing a roadmap for phasing in the eventual removal of NRSRO references from the rule? We are also considering an approach under which a money market fund's board would designate three (or more) NRSROs that the fund would look to for all purposes under rule 2a–7 in determining whether a security is an eligible security.[111] In addition, the board would be required to determine at least annually that the NRSROs it has designated issue credit ratings that are sufficiently reliable for that use.[112] We request comment on an approach in which the fund board designates NRSROs. Would the inclusion of a number of ''designated NRSROs'' improve rule 2a–7's use of NRSRO ratings as a threshold investment criterion and be consistent with the goals of Congress in passing the Rating Agency Reform Act? [113] What are the advantages and disadvantages of such an approach? Should funds be required to designate a minimum number of NRSROs to use in determining thresholds for Eligible Securities or in monitoring ratings? If so, would at least three be the appropriate number, as some have suggested? [114] Would more be appropriate to address these purposes (*e.g.,* four, five or six)? Should we permit fund boards to designate different NRSROs with respect to different types of issuers of securities in which the fund invests? Should the funds be required to disclose these designated NRSROs in their statements of additional information? [115]

What impact would a requirement that the fund board designate NRSROs have on competition among NRSROs? Would NRSROs compete through ratings to achieve designation by money market funds? Given that the staff believes it is reasonable to assume that the three NRSROs that issued almost 99 percent of all outstanding ratings across all categories that were issued by the 10 registered NRSROs as of June 2008,[116]

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[103] *See supra* note 84 and accompanying text. A ''rated security'' generally means a security that (i) has received a short-term rating from an NRSRO, or whose issuer has received a short-term rating from an NRSRO with respect to a class of debt obligations that is comparable in priority and security with the security; or (ii) is subject to a guarantee that has received a short-term rating from an NRSRO, or a guarantee whose issuer has received a short-term rating from an NRSRO with respect to a class of debt obligations that is comparable in priority and security with the guarantee. Rule 2a–7(a)(19).

[104] The rule also requires fund boards (which typically rely on the fund's adviser) to determine that the security presents minimal credit risks, and specifically requires that determination ''be based on factors pertaining to credit quality in addition to any ratings assigned to such securities by an NRSRO.'' Rule 2a–7(c)(3)(i).

[105] *See, e.g.,* References to Ratings of Nationally Recognized Statistical Rating Organizations, Investment Company Act Release No. 28327 (July 1, 2008) [73 FR 40124 (July 11, 2008)] (''NRSRO References Proposal'').

[106] *See, e.g.,* Comment Letter of Fidelity Investments (July 25, 2003) (File No. S7–12–03). Comment letters on File No. S7–12–03 are available at *http://www.sec.gov/rules/concept/s71203.shtm*l.

[107] Comment Letter of Denise Voigt Crawford, Securities Commissioner, Texas State Securities Board (July 28, 2003) (File No. S7–12–03).

[108] *See, e.g.,* Comment Letter of T. Rowe Price Family of Funds (Sept. 5, 2008) (File No. S7–19–08). Comment letters on File No. S7–19–08 are available at *http://www.sec.gov/comments/s7-19-08/s71908.shtml.*

[109] *See* ICI Report, *supra* note 6, at 81.

[110] *See* Comment Letter of Professor Frank Partnoy (received Sept. 5, 2008) (File No. S7–19–08).

[111] Commenters on our NRSRO References Proposal and the ICI Report recommended similar approaches. *See* Comment Letter of Federated Investors, Inc. (Sept. 5, 2008) (File No. S7–19–08) (suggesting that rule 2a–7 require the board or its delegate to select by security type at least three NRSROs on which the fund would rely under the rule); Comment Letter of OppenheimerFunds, Inc. (Sept. 4, 2008) (File No. S7–19–08) (suggesting the rule allow fund boards to designate (presumably after considering any recommendations of the investment manager) the identity and number of NRSROs whose ratings will be used to determine eligible portfolio securities); ICI Report, *supra* note 6, at 82 (recommending the fund designate three or more NRSROs that the fund would use in determining the eligibility of portfolio securities). *See also* Comment Letter of Stephen A. Keen on behalf of Federated Investors, Inc. (Mar. 12, 2007) (File No. S7–04–07) (in response to our 2007 proposal on oversight of NRSROs, asserting that investment advisers should be free to choose which NRSROs they will rely upon and monitor only their ratings).

[112] The only time that funds would be required to look to all NRSROs under this approach would be, as under the current rule, in determining whether a long-term security with a remaining maturity of 397 calendar days or less that does not, and whose issuer does not, have a short-term rating is an eligible security. *See infra* section II.A.2.b.

[113] *See* Senate Committee on Banking, Housing, and Urban Affairs, Credit Rating Agency Reform Act of 2006, S. Rep. No. 109–326, at 2 (2006) (''Senate Report 109–326'') (purposes of the Act include improving the quality of NRSRO credit ratings by fostering accountability, transparency, and competition in the credit rating industry).

[114] *See supra* note 111.

[115] *See* Part B of Form N–1A.

[116] The staff's belief is based on its report that three NRSROs issued almost 99 percent of all the outstanding ratings across all categories that were

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also issued well over 90 percent of all outstanding ratings of short term debt, and in light of concerns about enhancing competition among NRSROs, should the minimum number of designated NRSROs be greater than three, such as four, five, or six?[117] What are the advantages and disadvantages of requiring boards to monitor the ratings issued by all NRSROs? Should rule 2a–7 specify certain minimum policies and procedures for monitoring NRSROs? Should money market fund boards be permitted to designate credit rating agencies or credit evaluation providers that are not registered as NRSROs with the Commission under the Securities Exchange Act of 1934 and the rules we have adopted under those provisions?[118] Should a board be solely responsible for designating and annually reviewing a designated NRSRO or should we permit delegation of this responsibility? How many NRSROs would money market fund boards be likely to evaluate before making their designations? After a fund board had designated NRSROs, what incentives would the board have to change the designated NRSROs?

We request comment on the impact of any of these approaches on funds and their ability to maintain a stable net asset value. Would any particular requirement help funds to better determine whether a security is an eligible security? We also request comment on the potential impact on competition among NRSROs.

b. Long-Term Unrated Securities

Rule 2a–7 permits money market funds to invest in a long-term security with a remaining maturity of 397 calendar days or less (''stub security'') that is an unrated security (*i.e.,* neither the security nor its issuer or guarantor has a short-term rating) unless the security has received a long-term rating from any NRSRO that is not within the NRSRO's three highest categories of long-term ratings.[119] Under rule 2a–7, the measure of quality is the rating given to the issuer's short-term debt. In the absence of a short-term rating, the minimum long-term rating is designed to provide an independent check on a fund's quality determination.[120] In light of the changes we are proposing above to increase the portfolio quality standards of the rule, we propose to permit money market funds to acquire such securities only if they have received long-term ratings in the highest two ratings categories to more narrowly limit the credit risk to which a money market fund may be exposed.[121] As under the current rule, fund boards would continue to be required to determine that such a security is ''of comparable quality'' to a rated security if it met these proposed conditions.[122]

We request comment on this proposed change. Given our proposal to increase the quality standards of the rule, is the proposed change appropriate? Should we consider permitting funds to acquire these stub securities only if they have received long-term ratings in the highest rating category? What impact would the proposed amendment have on money market funds' current portfolio holdings? We request commenters expressing views on this change to provide us with data identifying the relationship between the long-term ratings on these stub securities and short-term ratings.

3. Credit Reassessments

Rule 2a–7 currently requires a money market fund's board of directors to promptly reassess whether a portfolio security continues to present minimal credit risks if, subsequent to its acquisition by the fund, (i) the security has ceased to be a first tier security (*e.g.,* the security is downgraded to second tier by one of the requisite NRSROs), or (ii) the fund's adviser becomes aware that an unrated or second tier security has received a rating from any NRSRO below the second highest short-term rating category.[123] In light of the proposed elimination of second tier securities from the definition of eligible security, we propose to amend rule 2a–7 so the only circumstance in which the fund's board of directors would be required to reassess whether a security continues to present minimal credit risks would be if, subsequent to its acquisition by the fund, the fund's money market fund adviser becomes aware that an unrated security has received a rating from any NRSRO below the highest short-term rating category.[124]

We request comment on whether these are appropriate circumstances under which to require a reassessment in light of our proposal to eliminate the ability of money market funds to invest in second tier securities.

4. Asset Backed Securities

Rule 2a–7 contains provisions that specifically address asset backed securities (''ABSs''),[125] including the circumstances under which an ABS is an eligible security,[126] the maturity of an ABS,[127] and how a fund must treat such an investment under the diversification provisions.[128] The rule, however, does not specifically address how a fund board (or its delegate) should determine that an investment in an ABS (or other potential portfolio investment) presents minimal credit risks, nor does it specifically address liquidity issues presented by a money market fund's investment in an ABS.

Both such matters were raised in 2007 by money market funds' investment in SIVs, which we discussed briefly above. SIVs issued commercial paper to finance a portfolio of longer term, higher yielding investments, including residential mortgages. Unlike other commercial paper programs, SIVs typically did not have access to liquidity facilities to protect commercial paper investors (including money market funds) against the risk of the issuer's inability to reissue (or ''rollover'') commercial paper caused by either a credit event of the issuer or a disruption in the commercial paper

issued by the 10 registered NRSROs as of June 2008. *See* SEC, Annual Report on Nationally Recognized Statistical Rating Organizations at 35 (June 2008) (''2008 NRSRO Report'').

[117] According to the ICI Report, requiring money market funds to designate at least three NRSROs whose ratings the fund would use in determining eligible portfolio securities could encourage competition among NRSROs to achieve designation by money market funds. *See* ICI Report, *supra* note 6, at 82.

[118] *See* 15 U.S.C. 78o–7; 17 CFR 240.17g–1 (rules governing the registration of NRSROs).

[119] Rule 2a–7(a)(10)(ii)(A). Nonetheless, the security may be an eligible security if it has received a long-term rating from the requisite NRSROs in one of the three highest long-term rating categories and (as with any unrated security that is an eligible security) is of comparable quality to a rated security. *Id.*

[120] *See* 1991 Adopting Release, *supra* note 20, at text accompanying nn.65–68.

[121] Proposed rule 2a–7(a)(11)(iv)(A). Similar to the provision in the current rule, the security might be an eligible security even if it received a long-term rating below the two highest long-term rating categories if the requisite NRSROs rate the security in one of the two highest long-term rating categories. *Id.*

[122] Proposed rule 2a–7(a)(11)(iv).

[123] Rule 2a–7(c)(6)(i)(A)(1) and (2).

[124] Proposed rule 2a–7(c)(7)(i)(A). As under the current rule, the proposed rule amendment would not require, and we would not expect, investment advisers to subscribe to every rating service publication in order to comply with the requirement that the board reassess when the fund's adviser becomes aware that any NRSRO has rated an unrated security below its highest rating. We would expect an investment adviser to become aware of a subsequent rating if it is reported in the national financial press or in publications to which the adviser subscribes. *See* 1991 Adopting Release, *supra* note 20, at n.71.

[125] An asset backed security is defined very generally to mean a fixed income security that entitles its holders to receive payments that depend primarily on the cash flow from financial assets underlying the asset backed security. *See* rule 2a–7(a)(3).

[126] *See* rule 2a–7(a)(10)(ii)(B).

[127] *See* rules 2a–7(a)(8)(ii) and 2a–7(d).

[128] *See* rule 2a–7(c)(4)(ii)(D).

market.[129] When they could no longer rollover their debt beginning in 2007, those SIVs, unable to secure liquidity support from sponsoring banks, were forced to begin selling the vehicles' assets into depressed markets to pay maturing debt and to begin winding down their operations. SIV credit ratings deteriorated rapidly as they deleveraged, placing pressure on valuations of SIV securities held by money market funds. We understand that eventually most funds holding SIV securities not supported by a large bank entered into agreements with affiliates of the fund to support the fund's stable net asset value per share.

We request comment on whether, and if so how, we should amend rule 2a–7 to address risks presented by SIVs or similar ABSs. As discussed above, rule 2a–7 requires that money market funds only invest in securities that the board of directors or its delegate determines present minimal credit risks.[130] The Commission has stated that ''[d]etermining that an ABS presents minimal credit risks requires an examination of the criteria used to select the underlying assets, the credit quality of the put providers, and the conditions of the contractual relationships among the parties to the arrangement. When an ABS consists of a large pool of financial assets, such as credit card receivables or mortgages, it may not be susceptible to conventional means of credit risk analysis because credit quality is based not on a single issuer but on an actuarial analysis of a pool of financial assets.'' [131] We also said, however, that we were concerned that ''fund credit analysts may be unable to perform the thorough legal, structural and credit analyses required to determine whether a particular ABS involves inappropriate risks for money market funds'' and, as a result, required that any ABS in which a money market fund invested be rated by an NRSRO because of NRSROs' role in assuring that the underlying ABS assets are properly valued and provide adequate asset coverage for the cash flows required to fund ABSs.[132]

As discussed above, beginning in 2007, SIV securities were rapidly downgraded by NRSROs revealing money market funds' varying minimal credit risk determinations with respect to these securities. In light of this experience, should we provide additional guidance to money market funds on the required minimal credit risk evaluation with respect to ABSs? We believe that part of this analysis, when evaluating any security, should include an evaluation of the issuer's ability to maintain its promised cash flows which, in the case of an asset backed security, would entail an analysis of the underlying assets, their behavior in various market conditions, and the terms of any liquidity or other support provided by the sponsor of the security.[133] Should we amend rule 2a–7 to remove the requirement that any ABS be rated by an NRSRO in order to be an eligible security for money market funds in light of the NRSROs' recent rapid downgrading of these securities? Under our proposed liquidity requirements (discussed below), the liquidity features of an ABS would have to be considered in determining whether the fund holds sufficiently liquid assets to meet shareholder redemptions.[134]

We request comment on whether rule 2a–7 should explicitly require fund boards of directors (or their delegates) to evaluate whether the security includes any committed line of credit or other liquidity support. Are there other factors that we should require money market fund boards to evaluate when determining whether SIV investments or other new financial products pose minimal credit risks? We note that some money market funds invested more significantly in SIV securities while other money market funds avoided such investments entirely. Are there facets of the credit analysis that led certain money market funds to avoid such investments that should be incorporated explicitly into rule 2a–7? [135] Should we limit money market funds to investing in ABSs that the manager concludes can be paid upon maturity with existing cash flow, *i.e.,* the payment upon maturity is not dependent on the ability of the special purpose entity to rollover debt? Alternatively, should the rule itself require ABSs to be subject to unconditional demand features to be eligible securities? [136]

B. Portfolio Maturity

Rule 2a–7 restricts the maximum remaining maturity of a security that a money market fund may acquire, and the weighted average maturity of the fund's portfolio, in order to limit the exposure of money market fund investors to certain risks, including interest rate risk. The Commission is proposing changes to the rule's maturity limits to further reduce such risks, as discussed below. First, we propose to reduce the maximum weighted average portfolio maturity permitted by the rule. Second, we propose a new maturity test that would limit the portion of a fund's portfolio that could be held in longer term variable- or floating-rate securities. Third, we propose to delete a provision in the rule that permits certain money market funds to acquire Government securities with extended maturities of up to 762 calendar days. We are also requesting comment on other ways of adjusting the rule's maturity provisions in order to accomplish our goal of decreasing the risks associated with a money market fund holding longer term investments.

1. Weighted Average Maturity

Rule 2a–7 requires a money market fund to maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value or price per share, but in no case greater than 90 days.[137] We adopted this provision because securities that have shorter periods remaining until maturity (and are of higher quality) generally exhibit a low level of volatility and thus provide a greater assurance that the money market fund will continue to be able to maintain a stable share price.[138]

[129] For a discussion of the evolution of the asset backed commercial paper market and SIV securities during this period, *see generally* Jim Croke, *New Developments in Asset-Backed Commercial Paper* (2008), at 2–4, *available at http://www.orrick.com/fileupload/1485.pdf.*

[130] Rule 2a–7(c)(3)(i).

[131] 1993 Proposing Release, *supra* note 81, at text accompanying nn.108–109.

[132] *Id.* at nn.110–112 and accompanying text.

[133] The ICI Report recommended that we amend rule 2a–7 to require money market fund advisers to adopt a ''new products committee.'' *See* ICI Report, *supra* note 6, at 79–80. Although such committees may be useful, their usefulness would turn on what might be a ''new product'' as well as the judgment of its members, whose judgment is today required to be brought to bear on whether the security presents minimal credit risks.

[134] *See infra* Section II.C.

[135] The staff's recent examinations of money market funds indicate that credit analysts for money market funds that invested in SIVs that subsequently defaulted appear to have had access to the same basic set of information on SIVs as did analysts at money market funds that did not and that the judgment of these credit analysts regarding minimal creditworthiness of the SIVs that subsequently defaulted appeared to have been different. The staff's exams also appear to indicate that credit analysts for money market funds that invested in SIVs that subsequently defaulted placed less emphasis on the length of time that payment experience was available on assets in the collateral pool and they were willing to accept sub-prime mortgage credits as a seasoned asset class. In addition, their decision, in part, may have been influenced by the greater amount of over-collateralization of the collateral pools and the high yields paid by notes supported by sub-prime credits.

[136] Rule 2a–7(a)(26) defines an ''unconditional demand feature'' as a ''demand feature'' that by its terms would be readily exercisable in the event of a default in payment of principal or interest on the underlying security or securities.

[137] *See* rule 2a–7(c)(2)(iii).

[138] *See* 1983 Adopting Release, *supra* note 3, at n.7 and accompanying text.

Having a portfolio weighted towards securities with longer maturities poses several risks to a money market fund. First, as we have noted in the past, a longer weighted average maturity increases a fund's exposure to interest rate risk.[139] Second, and as we discuss in more detail below, longer maturities also amplify the effect of widening credit and interest rate spreads on a fund.[140] Finally, a fund holding securities with longer maturities generally is exposed to greater liquidity risk, because fewer securities mature on a daily or weekly basis. Perhaps in recognition of these risks, few fund managers maintain weighted average maturity at or near the maximum permissible 90 days.[141]

In view of the extraordinary market conditions we have witnessed recently, the Commission is concerned that the 90-day maximum weighted average maturity under the rule may be too long. Particularly during the market events of last fall, funds with shorter portfolio maturities were much better positioned to withstand heavy redemptions, because a greater portion of their portfolios matured each week and provided cash to pay to redeeming investors. They also were better able to withstand increased credit spreads in certain financial sector notes because of the shorter period of exposure to such distressed securities. Finally, interest rate spreads on longer maturity securities widened to a much greater degree than interest rate spreads on shorter maturity securities.[142]

The ICI Report recommended reducing the maximum weighted average maturity to 75 days.[143] Historically, however, most funds have maintained shorter maturities. During the last 20 years, the average weighted average maturity of taxable money market funds (as a group) has never exceeded 58 days.[144] As of June 16, 2009, it was 53 days.[145] Some money market funds have, from time to time, extended their maturities substantially longer than the average to gain a yield advantage, anticipating declining or stable interest rates. By doing so, these funds assumed greater risk and would be more likely to experience losses that could result in their breaking the buck if interest rates rise, credit markets do not behave as they expect, or they receive substantial redemption requests.

Most European money market funds with stable share prices (many of which are domiciled in Ireland) are limited to 60-day weighted average maturities.[146] So are money market funds rated highly by the NRSROs.[147] In light of these considerations, we believe that a shorter period may be appropriate. Accordingly, we propose that rule 2a–7 be amended to impose a 60-day weighted average maturity limit.[148]

We request comment on the proposed 60-day weighted average maturity limit. Would it decrease portfolio volatility and increase fund liquidity, as we suggest? What would be the anticipated effect on money market fund yields? Would a negative effect on yields make money market funds less attractive to investors? Should a different weighted average maturity limit apply, such as 45 days or 75 days? We request that commenters provide us with data demonstrating the effect that alternative weighted average maturity limits would have had on portfolios of money market funds during the recent economic turmoil.

2. Weighted Average Life

We propose to add to rule 2a–7 a new maturity test, which would limit the weighted average life maturity of portfolio securities to 120 days.[149] As explained further below, the weighted average life of a portfolio would be measured without regard to a security's interest rate reset dates, and thus would limit the extent to which a fund could invest in longer term securities that may expose a fund to interest rate spread risk and credit spread risk.[150]

Generally, under rule 2a–7 the maturity of a portfolio security is the period remaining until the date on which the principal must unconditionally be repaid according to its terms (its final ''legal'' maturity) or, in the case of a security called for redemption, the date on which the redemption payment must be made.[151] The rule contains exceptions from this general approach for specific types of securities, which are referred to as the ''maturity shortening'' provisions.[152] Among these exceptions are three provisions that allow a fund to treat a variable- or floating-rate security as having a maturity equal to the time remaining to the next interest rate reset

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[139] *See* 1990 Proposing Release, *supra* note 22, at text accompanying n.60. *See also* Standard & Poor's, Money Market Fund Ratings Criteria, at 21 (2007) *available at http://www2.standardandpoors.com/spf/pdf/events/MMX709.pdf* (''S&P 2007 Ratings Criteria'') (''The portfolio's weighted average maturity (WAM) is a key determinant of the tolerance of a fund's investments to rising interest rates. In general, the longer the WAM, the more susceptible the fund is to rising interest rates. A fund comprised entirely of Treasury securities with a WAM of 45 days could withstand approximately twice the interest rate increase than could a fund with a 90-day WAM, leaving all other factors aside.''); Fabozzi, *supra* note 98, at 4 (''[T]he volatility of a bond's price is closely associated with maturity: Changes in the market level of [interest] rates will wrest much larger changes in price from bonds of long maturity than from otherwise similar debt of shorter life.'').

[140] *See also supra* notes 65–71 and accompanying text.

[141] According to monthly statistics kept by the Investment Company Institute, during the past 10 years, the weighted average maturities of funds in the longest maturity categories (the 90th percentile of all taxable prime money market funds) seldom have exceeded 75 days. As of April 30, 2009, these funds maintained an average weighted maturity of 67 days. These statistics are available in File No. S7–11–09.

[142] *See, e.g.,* U.S. Department of the Treasury, *Daily Treasury Yield Curve Rates, available at http://www.treasury.gov/offices/domestic-finance/debt-management/interest-rate/yield_historical_main.shtml.*

[143] *See* ICI Report, *supra* note 6, at 77.

[144] 2008 Fact Book, *supra* note 13, at Table 38. In 2009, the ICI Fact Book began presenting this information separately for taxable government and taxable non-government money market funds, which had average maturities of 49 days and 47 days, respectively, in 2008. 2009 Fact Book, *supra* note 7, at 150–51, Tables 41 & 42.

[145] *See Money Fund Report,* iMoneyNet, May 7, 2008. Average maturity for tax exempt money market funds (as a group) is even lower—24 days as of June 16, 2009. *Id.*

[146] *See* Irish Financial Services Regulatory Authority, *Valuation of Assets of Money Market Funds,* 2008 Guidance Note 1/08 (Aug. 2008), *available at http://www.financialregulator.ie/industry-sectors/funds/Documents/Guidance%20Note%20108%20Valuation%20of%20Assets%20of%20Money%20Market%20Funds.pdf* (''Financial Regulator Guidance Note 1/08''). As of April 2009, money market funds registered in Ireland managed approximately €317 billion ($419 billion) in assets. *See* Irish Financial Regulator statistics *available at http://www.irishfunds.ie/money_marketfunds.htm.* In addition, the Institutional Money Market Funds Association (''IMMFA'') requires the triple-A rated institutional money market funds sponsored by its members to comply with a Code of Practice that generally limits portfolio maturity to 60 days. *See* IMMFA, Code of Practice, Part IV., ¶ 22 (2005), *available at http://www.immfa.org/about/Codefinal.pdf.* As of February 13, 2009, IMMFA-member constant net asset value money market funds managed approximately $493 billion in assets. *See* IMMFA statistics, *available at http://www.immfa.org/stats/IMFR130209.pdf. See also* ICI Report, *supra* note 6, at 184, Appendix H.

[147] *See* S&P 2007 Ratings Criteria, *supra* note 139, at 21; Moody's Investors Service, Frequently Asked Questions about Moody's Ratings of Managed Funds, at 4 (July 20, 2005), *available at http://www.moodys.com/moodys/cust/research/MDCdocs/20/2003600000425726.pdf?search=5&searchQuery=Frequently+Asked+Questions+about+Moody*; Fitch Ratings, U.S. Money Market Fund Ratings, at 4 (Mar. 3, 2006), *available at http://www.fitchresearch.com/creditdesk/reports/report_frame.cfm?rpt_id=266376.*

[148] *See* proposed rule 2a–7(c)(2)(ii).

[149] *See* proposed rule 2a–7(c)(2)(iii).

[150] While the proposed rule would ignore interest rate resets for purposes of calculating the fund's weighted average life to maturity, a security's demand features could continue to be used in this calculation. *See, e.g.,* rule 2a–7(d)(3) and (d)(5).

[151] *See* rule 2a–7(d).

[152] *Id.* We added maturity shortening provisions to the rule in 1986; they are particularly important for tax exempt funds, which invest in municipal obligations, most of which are issued with longer maturities. *See* 1986 Adopting Release, *supra* note 19, at nn.9–10 and accompanying text.

date.[153] First, a fund may treat a short-term variable-rate security (*i.e.*, one with a remaining maturity of 397 days or less), as having a maturity equal to the earlier of the interest rate reset date or the time it would take the fund to recover the principal by exercising a demand feature.[154] Second, a fund may treat a short-term floating-rate security (*i.e.*, one with a remaining maturity of 397 days or less) as having a maturity of one day.[155] Third, a variable- or floating-rate Government security generally may be deemed to have a maturity equal to the next reset date even if it is a long-term security.[156] For purposes of calculating weighted average maturity, the rule effectively treats short-term variable- and floating-rate securities and all adjustable-rate Government securities as if they were a series of short-term obligations that are continually ''rolled over'' on the reset dates at the current short-term interest rates.

As the ICI Report explains, however, longer term adjustable-rate securities are more sensitive to credit spreads (the amount of additional yield demanded by purchasers above a risk-free rate of return to compensate for the credit risk of the issuer) than short-term securities with final maturities equal to the reset date of the longer term security.[157] Longer term adjustable-rate securities also are subject for a longer period of time to risk from widening interest rate spreads.[158] As a result, prices of longer term adjustable-rate securities could fall more than prices of comparable short-term securities in times of market turbulence. The ICI Report also notes that while adjustable-rate securities do protect a fund against changes in interest rates, permitting maturity shortening based on interest rate resets does not protect against liquidity risk to the portfolio.[159]

We are concerned that the traditional weighted average maturity measurement of rule 2a–7 does not require that a manager of a money market fund limit these risks. We understand that some money market fund portfolio managers, to protect the fund, have already begun using a weighted average maturity measurement that ignores interest rate resets.

The ICI Report confirms our observations of the behavior of prices for certain securities last fall, when money market funds found it difficult to sell at amortized cost longer term adjustable-rate securities, including securities issued by agencies of the federal government. We believe that the use of the measurement the ICI recommends, which we will call the ''weighted average life'' to maturity of a money market fund portfolio, appears to be a prudent limitation on the structure of a money market fund portfolio and would limit credit and interest rate spread risks not encompassed by the weighted average maturity restriction of rule 2a–7. As suggested by the ICI Report, we are proposing that money market funds maintain a weighted average life of no more than 120 days.[160] The Commission believes that a 120-day weighted average life requirement would provide a reasonable balance between strengthening the resilience of money market funds to market stress (*e.g.*, interest rate increases, widening spreads, and large redemptions) while not unduly restricting the funds' ability to offer a diversified portfolio of short-term, high quality debt securities.

One of the effects of a limit on the weighted average life of a portfolio would appear to be on funds that hold longer term floating-rate Government securities, which are issued by federal agencies. Consider a money market fund with a portfolio consisting 50 percent of overnight repurchase agreements and 50 percent of two-year Government agency floating-rate obligations that reset daily based on the federal funds rate. Using the reset dates as permitted by the rule's maturity shortening provisions, the portfolio would have a weighted average maturity of one day. In contrast, by applying a measurement that does not recognize resets, the portfolio would have a weighted average life of 365.5 days (*i.e.*, half of the portfolio has a one day maturity and half has a two-year maturity), which would be considerably longer than the 120-day limit we are proposing. The weighted average life limitation would provide an extra layer of protection for funds and their shareholders against spread risk, particularly in volatile markets.

We request comment on all aspects of the proposed weighted average life limitation. Is this new maturity test appropriate? Is 120 days an appropriate limit? What would be the effect on yield? Does it place too much of a constraint on the ability of money market fund advisers to effectively manage fund portfolios? Does it permit funds to assume too much risk? Would a different limit be more appropriate, such as 90 days or 150 days? Would the proposed weighted average life limitation have a material impact on the issuers of short-term debt and, if so, what would it be?

We request comment on whether there are alternative approaches to measuring these risks. We understand that some fund managers use an alternative maturity test that focuses solely on credit spread risk. Such a test not only disregards interest rate resets, but also excludes Government securities from the weighted average maturity calculation. Would this test provide a clearer indication of the overall credit spread risk of the portfolio? Are there other advantages to such an approach? If so, what would be an appropriate limit? Should it be the same as proposed weighted average life limitation of 120 days, or should it be different, such as 90 days or 150 days? We request that commenters provide us with data demonstrating the effect of such alternative credit limitations and/or weighted average life limitations on their portfolios during the recent economic turmoil.

When the Commission first adopted rule 2a–7, we explained that we were allowing Government securities to use resets for purposes of the maturity limitations under the rule because we understood that the volatility of such instruments would be no greater than the volatility of fixed interest rate instruments having a maturity equal to the period before the security's interest rate reset.[161] The Commission noted, however, that this position was based entirely upon experience with Small Business Administration guaranteed debentures—at the time the only

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[153] *See* rule 2a–7(a)(13) (defining ''floating rate security'') and (a)(29) (defining ''variable rate security''). The interest rate for a variable-rate security is established on set dates, whereas the interest rate for a floating-rate security adjusts whenever a specified interest rate changes. We also may refer to variable- and floating-rate securities collectively in this Release as ''adjustable-rate'' securities.

[154] *See* rule 2a–7(d)(2). *See also* rule 2a–7(a)(8) (definition of ''demand feature'').

[155] *See* rule 2a–7(d)(4).

[156] *See* rule 2a–7(d)(1) (allowing a variable-rate Government security where the variable rate is readjusted no less frequently than every 762 days to be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate, and a floating-rate Government security to be deemed to have a remaining maturity of one day).

[157] *See* ICI Report, *supra* note 6, at 77.

[158] Interest rate spreads can widen because a variable-rate note has a fixed period of time to the next interest reset date and during that time the benchmark interest rate will likely change. Interest rate spreads can also widen because market conditions change after the security is issued such that investors may demand a greater margin to hold the security. *See* Fabozzi, *supra* note 98, at 196.

[159] *See* ICI Report, *supra* note 6, at text accompanying n.140.

[160] The proposed rule would require a money market fund to maintain a weighted average maturity not to exceed 120 days, determined without reference to the exceptions in paragraph (d) of the rule regarding interest rate resets. *See* proposed rule 2a–7(c)(2)(iii).

[161] *See* 1983 Adopting Release, *supra* note 3, at n.16.

adjustable-rate Government securities of which the Commission was aware.[162] The Commission stated that it would consider amending this provision if market experience indicates that such treatment is inappropriate.[163]

Since 1983, the number and variety of adjustable-rate Government securities have grown and, in particular, the issuance of such securities by Freddie Mac and Fannie Mae increased significantly with the growth in mortgage-backed securities. While adjustable-rate securities historically have maintained market values similar to equivalent short-term fixed-rate securities, last fall these Government securities experienced increased credit and interest rate spreads and greater volatility than Government securities with maturities similar to the reset dates of the adjustable-rate securities.[164] Further, as noted above, other short-term adjustable-rate securities also experienced increased credit and interest rate spreads and greater volatility than securities with maturities similar to the reset dates.

Currently, rule 2a–7 permits funds to rely on these reset provisions to shorten portfolio maturities only if boards or their delegates can reasonably expect that the security's market value will approximate its amortized cost on the reset date.[165] However, recent experience suggests that in times of market stress, this expected performance may not hold true. Would the weighted average life to maturity limitation adequately address this risk? Are there other alternative limitations or tests that would have mitigated this risk last fall? Should we restrict a fund's ability to use the maturity-shortening provisions of the rule to those adjustable-rate securities, including Government securities, with maximum final maturities of no more than two years, three years, or four years? What would be the impact of the weighted average life limitation on longer term adjustable-rate Government securities issuers?

3. Maturity Limit for Government Securities

The Commission is proposing to delete a provision of the rule that permits a fund that relies exclusively on the penny-rounding method of pricing to acquire Government securities with remaining maturities of up to 762 days, rather than the 397-day limit otherwise provided by the rule.[166] We are unaware of money market funds today that rely solely on the penny-rounding method of pricing, and none that hold fixed-rate Government securities with remaining maturities of two years, which we are concerned would involve the assumption of a substantial amount of interest rate risk. We request comment on our proposal to delete the provision. Are we correct that funds no longer use it? If not, are there reasons why we should retain it?

4. Maturity Limit for Other Portfolio Securities

Currently, in order to qualify as an eligible security under rule 2a–7, an individual security generally cannot have a remaining maturity that exceeds 397 days.[167] We request comment on whether we should consider reducing the maximum maturity for individual non-Government securities acquired by a money market fund from 397 days to, for example, 270 days.[168]

The length of time remaining before a security matures affects its sensitivity to increases in interest rates. In addition, a shorter maturity decreases the amount of time a fund is exposed to potential investment losses for a particular security. On the other hand, it is less clear that such a change would produce a significant increase in the safety and stability of money market funds if we were to adopt it in addition to adopting the proposed 60-day weighted average maturity and 120-day weighted average life limitations. Moreover, unlike the weighted average maturity and weighted average life limitations, a stricter maturity limitation on individual securities could have a substantially greater adverse impact on issuers of short-term obligations other than commercial paper, including issuers of tax exempt municipal securities.

What would be the effects on money market funds and the capital markets of shortening the maturity limit on individual portfolio securities to 270 days? Would there be benefits to funds from shortening the maturities of individual securities beyond the benefits that would be attained through the 60-day weighted average maturity and 120-day weighted average life limitations? What would be the likely impact on money market fund yields? What effect, if any, would shortening the maturity limit have on the supply of rule 2a–7-eligible securities? Should Government securities be excluded from a 270-day maturity limit?[169] If we were to adopt a maximum 270-day maturity for individual securities, should we include or exclude securities issued by municipalities, which typically issue debt securities with maturities of a year or more?

C. Portfolio Liquidity

Rule 2a–7 does not contain any provisions limiting the ability of a money market fund to hold or acquire illiquid assets.[170] Money market funds are, however, subject to section 22(e) of the Act, which requires registered investment companies to satisfy redemption requests in no more than seven days—a requirement we have construed as restricting a money market fund from investing more than 10 percent of its assets in illiquid securities.[171] Since rule 2a–7 was first adopted we have emphasized the importance of a money market fund holding sufficiently liquid securities. Money market funds often have a greater, and perhaps less predictable, volume of redemptions than other open-end investment companies.[172] And because many promise to provide redemptions sooner than other types of open-end funds—often on the same day that the redemption request is received—money market funds need

[162] *See id.*

[163] *See id.*

[164] *See* Jody Shenn, *Fannie Mae Debt Spreads Hit Records as GMAC Seeks Bank Status*, Bloomberg, Nov. 20, 2008; Jody Shenn, *Agency Mortgage-Bond Spreads Head for Worst Month on Record*, Bloomberg, Oct. 31, 2008, *available at http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aSc8k8D7ZMw0*.

[165] *See* rule 2a–7(a)(13) and (a)(29).

[166] *See* rule 2a–7(c)(2)(ii). We added this provision in 1991. *See* 1991 Adopting Release, *supra* note 20, at nn.53–57 and accompanying text. In a conforming change, we also propose to revise the maturity-shortening provision of the rule for variable-rate Government securities to require that the variable rate of interest is readjusted no less frequently than every 397 days, instead of 762 days as currently permitted. *See* rule 2a–7(d)(1); proposed rule 2a–7(d)(1).

[167] *See* rule 2a–7(a)(10)(i) and (c)(2)(i).

[168] A maturity limit of 270 days would be consistent with the exemption for commercial paper under section 3(a)(3) of the Securities Act of 1933 [15 U.S.C. 77c(a)(3)].

[169] We note that, while posing less credit risk, Government securities are subject to much the same risks as corporate securities from rising spreads between their market price and money market benchmarks, whether due to liquidity concerns, changes in interest rates, or other factors. For this reason some rating agencies have imposed limitations on remaining maturities of adjustable-rate Government securities held by money market funds. *See, e.g.*, S&P 2007 Ratings Criteria, *supra* note 139, at 30 (setting a two-year limit for remaining maturities of floating- or variable-rate Government securities held by money market funds for the fund to maintain the highest rating).

[170] *See* 1983 Adopting Release, *supra* note 3 at n.37 and accompanying text (''[Rule 2a–7] does not limit a money market fund's portfolio investments solely to negotiable and marketable instruments * * *.'').

[171] *See, e.g., id.* at nn.37–38 and accompanying text; 1986 Adopting Release, *supra* note 19, at n.21 and accompanying text.

[172] *See, e.g.*, 1986 Adopting Release, *supra* note 19, at text preceding and accompanying n.22; 1983 Adopting Release, *supra* note 3, at text following n.39.

sufficient liquidity to meet redemption requests on a more immediate basis.[173]

By holding illiquid securities, a money market fund exposes itself to a risk that it may be unable to satisfy redemption requests promptly, without selling illiquid securities at a loss that could impair its ability to maintain a stable net asset value per share.[174] Illiquid securities also complicate the valuation of the fund's portfolio.[175] Moreover, illiquid securities are subject to greater price volatility, exposing the fund to greater risk of breaking a buck as a result of net asset values eroding in a declining market.[176]

We have not included a specific provision in rule 2a–7 regarding liquidity because, until recently, money market funds had not experienced a severe liquidity shortfall. As discussed above, in September 2008, the markets for both traditional and asset-backed commercial paper essentially seized up. Large portions of many money market fund portfolios became illiquid when buyers of asset-backed and traditional commercial paper fled the market.[177] At the same time, many money market funds—principally institutional money market funds—received substantial redemption requests.[178] The ability of these funds to maintain a stable net asset value turned on their ability to convert portfolio holdings to cash without selling them at ''fire sale'' prices.

These events suggest to us that rule 2a–7 should be amended to address liquidity risks that money market funds face. We propose to amend rule 2a–7 to add new risk-limiting conditions designed to improve money market funds' ability to meet significant redemption demands.

1. Limitation on Acquisition of Illiquid Securities

We propose to prohibit money market funds from acquiring securities unless, at the time acquired, they are liquid, *i.e.,* securities that can be sold or disposed of in the ordinary course of business within seven days at approximately their amortized cost value.[179] In light of the risk to the fund of securities becoming illiquid as a result of market events, such as those that occurred last fall, investing any portion of the fund in securities that are already illiquid may be imprudent and thus should be prohibited by rule 2a–7.

We request comment on our proposal to preclude funds from acquiring illiquid securities. We understand that some funds make very limited investments in securities that, at the time of acquisition, are illiquid, such as insurance company funding agreements, loan participations, and structured notes that have no demand features. Would this proposed provision (which would not prohibit funds from continuing to hold securities that become illiquid after their purchase) have a significant impact on money market funds? What would be the impact on funds of not being able to buy illiquid securities? Would there be a material impact on yield?

2. Cash and Securities That Can Be Readily Converted to Cash

As discussed above, liquidity of a money market fund portfolio is critical to the fund's ability to maintain a stable net asset value. Our traditional notions of liquidity incorporated into our guidelines (discussed above) appear to be inadequate to meet the needs of a money market fund because the guidelines assume that a fund has time (up to seven days) to sell securities and that there will be a market for the securities. As noted above, money market funds typically undertake to pay their investors more quickly (frequently the same or following day). As the events of last fall demonstrated, money market funds may be unable to rely on a secondary or dealer market ready to provide immediate liquidity at amortized cost under all market conditions. Therefore we are proposing new liquidity tests that would be based on the fund's legal right to receive cash rather than its ability to find a buyer of the security.

The amount of liquidity a fund will need will vary from fund to fund and will turn on cash flows resulting from purchases and redemptions of shares. As a general matter, a fund that has some large shareholders, any one of which could redeem its entire position in a single day, will have greater liquidity needs than a retail fund that has thousands of relatively small shareholders. A fund that competes for yield-sensitive shareholders (*e.g.,* ''hot money'') through electronic ''portals'' will have substantially greater liquidity needs than a fund holding the cash of commercial enterprises that have predictable needs (such as payrolls).[180]

Our proposed formulation of a new liquidity standard is designed to take into consideration each of these factors. The proposed daily and weekly standards, discussed immediately below, would be minimum standards; the proposed general standard (which we discuss after the minimum standards) may require a fund to maintain a higher portion of its portfolios in cash or securities that can readily be converted into cash.

[173] *See* 1983 Adopting Release, *supra* note 3, at text following n.39.

[174] *Id.* at text preceding, accompanying and following nn.37–39.

[175] *Id.* at text preceding section titled ''Obligation of the Board to Maintain Stable Price.''

[176] S&P 2007 Ratings Criteria, *supra* note 139, at 21.

[177] *See* Board of Governors of the Federal Reserve, Report Pursuant to Section 129 of the Emergency Economic Stabilization Act of 2008: Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility (undated), *available at http://www.federalreserve.gov/monetarypolicy/files/129amlf.pdf* at 1–2 (''In ordinary circumstances, MMMFs would have been able to meet these redemption demands by selling assets. At the time of the establishment of the AMLF, however, many money markets were extremely illiquid, and the forced liquidation of assets by MMMFs was placing increasing stress on already strained financial markets.''); *see generally* Board of Governors of the Federal Reserve, Monetary Policy Report to the Congress (Feb. 24, 2009), Part 2, *http://www.federalreserve.gov/monetarypolicy/mpr_20090224_part2.htm.*

[178] *See* ICI Mutual Fund Historical Data, *supra* note 47 (in the week ending September 17, the day after the Reserve Primary Fund announced that it would break a dollar, institutional money market fund assets fell by more than $119 billion while retail money market fund assets fell by $1.1 billion).

[179] Proposed rule 2a–7(c)(5). ''Liquid security'' would be defined in proposed rule 2a–7(a)(19). Last year in the NRSRO References Proposal, we proposed to define ''liquid security'' as a security that can be sold or disposed of in the ordinary course of business within seven days at approximately the cost ascribed to it by the money market fund. *See supra* note 105, at n.28 and accompanying text. *See also* 1986 Adopting Release, *supra* note 19, at text following n.21 (''The term 'illiquid security' generally includes any security which cannot be disposed of promptly and in the ordinary course of business without taking a reduced price.''). The one comment we received on the proposed definition recommended the definition refer to the ''shadow price'' rather than the ''value'' ascribed to the security by the money market fund. Most funds that rely on rule 2a–7 value their securities using the amortized cost method and thus would be required to acquire securities that can be sold or disposed of in the ordinary course of business within seven days at approximately amortized cost value.

[180] *See Money Market Funds Tackle ''Exuberant Irrationality,''* Standard & Poor's, RatingsDirect (Sept. 30, 2008), *available at http://www2.standardandpoors.com/spf/pdf/media/MoneyMarketFunds_Irrationality.pdf* (''It is likely that certain yield-sensitive institutions commonly referred to as 'hot money' accounts, moved money from one investment to another to capture a higher yielding, or seemingly safer, option. For example, after Lehman Bros. filed for bankruptcy, corporations that issued commercial paper (CP) to fund their business operations were forced to pay a significantly higher premium to obtain funding because of investor concerns with holding debt from any nongovernment issuer. The subsequent 'flight to quality' pushed some overnight and 30-day CP rates up by 0.5% (to approximately 3.5%) for issuers whose credit or financial/risk profile did not seem to change. As a result, these hot money accounts moved their investments from money market funds yielding less than 2.75%.'').

a. Minimum Daily Liquidity Requirement

Taxable Retail Funds. We propose to require each taxable retail money market fund to invest at least five percent of its assets in cash, U.S. Treasury securities, or securities that can provide the fund with daily liquidity, *i.e.,* securities that the fund can reasonably expect to convert to cash within a day.[181] Unlike our liquidity guidelines discussed above, which allow for a period during which a fund would be expected to seek buyers in a secondary market, these daily liquidity requirements would be significantly more demanding, requiring a portion of the funds' assets be held in ''daily liquid assets,'' which the rule would define as: (i) Cash (including demand deposits); (ii) securities (including repurchase agreements) for which the fund has a contractual right to receive cash within one business day either because the security will mature or the fund can exercise a demand feature; [182] or (iii) U.S. Treasury securities, which have historically traded in deep, liquid markets, even in times of market distress.[183]

Under the proposed amendments, a money market fund that is a ''retail fund'' could not acquire any securities other than daily liquid assets if, immediately after the acquisition, the fund would have invested less than five percent of its total assets in those assets (''minimum daily liquidity requirement'').[184] Compliance with the daily liquidity requirement would be determined at the time each security is acquired, and thus a fund would not have to dispose of less liquid securities (and potentially realize an immediate loss) if the portion of the fund held in highly liquid securities fell below five percent as a result of redemptions.

Retail money market funds experienced relatively modest redemption demands last fall, even in the midst of substantial market turbulence.[185] Thus we believe that a five percent requirement, which was recommended in the ICI Report, may be sufficient.[186] We request comment on our analysis, and whether a five percent standard is appropriate in light of the liquidity needs of retail money market funds (which we distinguish from institutional money market funds in the next section of this release). Should we consider a higher percentage, such as 10 percent or 15 percent, or a lower percentage, such as two percent or three percent? Do our proposed amendments strike the right balance between reducing liquidity risk and limiting the impact on yield? What would be the effect on yields of a lower or higher minimum daily liquidity requirement? There may be a number of factors that influence the lower redemption rates among retail investors, including investment purposes and practices, size of investments and possible differences in the information that retail as opposed to institutional investors obtain and the time when they obtain the information. We solicit comment on whether these factors did or would in the future influence the level of retail redemptions. If so, how should the proposed rule be revised to address such factors?

We also request comment on the definition of ''daily liquid assets.'' Are there other securities that are sufficiently liquid that should be included in the definition?

A fund's contractual rights to cash will be different if the fund is relying on an unconditional demand feature rather than a conditional demand feature, which the fund may not be able to exercise if there is a default or other credit event with respect to the issuer of the securities.[187] Rule 2a–7 permits both to be used to shorten the maturity of an instrument.[188] For purposes of determining the daily liquidity requirement, should the rule distinguish between securities subject to conditional and unconditional demand features?

As discussed above, compliance with the daily liquidity requirement would be determined at the time each security is acquired. A fund could acquire only daily liquid assets until the portfolio investments met the five percent daily liquidity test.[189] Because the requirement applies only at the time of acquisition, a money market fund would not have to maintain a specified percentage of its assets in daily liquid assets at all times (subject to the general liquidity requirement discussed below), even though the fund is exposed to liquidity risk at all times. We request comment on whether to impose a minimum liquidity maintenance requirement, *i.e.,* require that a money market fund maintain five percent of its portfolio at all times in daily liquid assets. What are the advantages and disadvantages of each approach?

Taxable Institutional Funds. We propose to limit a taxable institutional fund to acquiring daily liquid assets unless, immediately after acquiring a security, the fund holds at least 10 percent of its total assets in daily liquid assets.[190] Institutional money market funds typically maintain a greater portion of their assets in cash and overnight repurchase agreements than retail funds, which reflects the greater

[181] Proposed rule 2a–7(c)(5)(iii).

[182] A ''demand feature'' means a feature permitting (i) the holder of a security to sell the security at an exercise price equal to the approximate amortized cost of the security plus accrued interest, if any, at the time of exercise, and (ii) the holder of an asset backed security unconditionally to receive principal and interest within 397 calendar days of making demand. Rule 2a–7(a)(8).

[183] U.S. Treasury securities were highly liquid last fall. *See, e.g., FRB Open Market Committee Oct. 28–29 Minutes, supra* note 51, at 5 (''Yields on short-term nominal Treasury coupon securities declined over the intermeeting period, reportedly as a result of substantial flight-to-quality flows and heightened demand for liquidity. In contrast, higher term premiums and expectations of increases in the supply of Treasury securities associated with the Emergency Economic Stabilization Act and other initiatives seemed to put upward pressure on longer term nominal Treasury yields. Yields on longer term inflation-indexed Treasury securities, which are relatively illiquid, rose more sharply than did those on nominal securities.''); *Minutes of the Federal Open Market Committee,* Federal Reserve Board, Dec. 15–16, 2008, at 5, *available at http://www.federalreserve.gov/monetarypolicy/files/fomcminutes20081029.pdf* (''*FRB Open Market Committee Oct. 28–29 Minutes''*) (Dec. 15–16, 2008), at 4, *available at http://www.federalreserve.gov/monetarypolicy/files/fomcminutes20081216.pdf* (''Yields on nominal Treasury coupon securities declined significantly over the intermeeting period in response to safe-haven demands as well as the downward revisions in the economic outlook and the expected policy path. Meanwhile, yields on inflation-indexed Treasury securities declined by smaller amounts, leaving inflation compensation lower. Although the decline in inflation compensation occurred amid sharp decreases in inflation measures and energy prices, it was likely amplified by increased investor preference for the greater liquidity of nominal Treasury securities relative to that of inflation-protected Treasury securities.'').

[184] The term ''daily liquid assets'' is defined in proposed rule 2a–7(a)(8). A ''retail fund'' would be defined as any fund other than an institutional fund. Proposed rule 2a–7(a)(24). For a discussion of the definition of ''institutional fund,'' *see infra* text preceding, accompanying and following note 196. ''Total assets'' means with respect to a money market fund using the amortized cost method, the total amortized cost of its assets and, with respect to any other money market fund, the total market-based value of its assets. Rule 2a–7(a)(27).

[185] *See supra* note 178. On September 17, 2008, approximately 4% of prime retail money market funds and 25% of prime institutional money market funds had outflows greater than 5%; on September 18, 2008, approximately 5% of prime retail funds and 30% of prime institutional funds had outflows greater than 5%; and on September 19, 2008, approximately 5% of prime retail funds and 22% of prime institutional funds had outflows greater than 5%. This information is based on analysis of data from the iMoneyNet Money Fund Analyzer database.

[186] *See* ICI Report, *supra* note 6, at 74.

[187] *See* rule 2a–7(a)(26) (defining ''unconditional demand feature''); rule 2a–7(a)(6) (defining ''conditional demand feature'').

[188] *See* rule 2a–7(d)(3), (5).

[189] This is also the approach rule 2a–7 takes with respect to money market fund credit quality and diversification requirements. *See* rule 2a–7(c)(3), (4).

[190] Proposed rule 2a–7(c)(5)(iii).

liquidity needs of these funds.[191] These greater needs were demonstrated last fall, when (as discussed above) institutional funds were subject to substantially greater redemption pressure than retail funds.[192] We understand that some of these institutional funds had cash positions of almost 50 percent in their portfolios in anticipation of substantial redemptions following the large amount of inflows during 2007 through August 2008.

We request comment on whether institutional money market funds should be subject to a higher daily liquidity requirement (10 percent) than retail funds (five percent). Should we consider a higher percentage, such as 15 or 20 percent? Ten percent daily liquidity could seem high for a money market fund that reserved the right to delay payment of redemptions for seven days. We are not proposing to adjust the appropriate minimum daily liquidity requirement for institutional or retail funds solely by reference to the seven day period, however, because many money market funds undertake to pay redemption proceeds on the same day or the next day, and an announcement by a fund of a delay in payment of redemption could itself precipitate a run on funds. We request comment on whether a five percent daily liquidity requirement for retail funds or a 10 percent daily liquidity requirement for institutional funds should turn on the representations the money market fund has made to its investors regarding the timing of payments of redemption proceeds.

We propose to add two new definitions to rule 2a–7 to distinguish between retail and institutional money market funds. Although the ICI and others who compile data about money market funds have traditionally distinguished between retail and institutional money market funds, in practice the distinctions are not always clear.[193] An institutional fund may have investors who invest on behalf of retail investors. For example, institutional money market funds commonly have investors that are bank sweep accounts or master funds in master-feeder arrangements.[194] Although these investors ordinarily provide cash flows to the fund that are more similar to retail funds, a single decision-maker may be in a position to redeem all of the shares of the money market fund and move the sweep account to another money market fund. In addition, some funds have a single portfolio but issue separate classes of shares to retail and institutional investors that bear different expenses. In these cases, the cost of managing the institutional share class's relatively greater cash flow volatility is shared with the retail investors.

Our proposed amendments would require that a money market fund's board determine, no less frequently than once each calendar year, whether the fund is an institutional money market fund for purposes of meeting the liquidity requirements.[195] In particular, the fund's board of directors would determine whether the money market fund is intended to be offered to institutional investors or has the characteristics of a fund that is intended to be offered to institutional investors, based on the: (i) Nature of the record owners of fund shares; (ii) minimum amount required to be invested to establish an account; and (iii) historical cash flows, resulting or expected cash flows that would result, from purchases and redemptions.[196] The provision is designed to permit fund directors to evaluate the overall characteristics of the fund based on relevant factors.[197] Under the provision, a fund offered through two classes, a majority of whose shares are held by retail investors, should nonetheless be deemed to be an institutional fund by the fund board if the cash flows from purchases and redemptions and the portfolio management required to meet liquidity needs based on those cash flows are more characteristic of an institutional money market fund.

We request comment on our proposed definitions. The differences today in the liquidity management of institutional and retail money market funds suggest to us that fund managers (and perhaps fund boards) currently distinguish between retail and institutional funds. Would our proposed definition permit them to continue to draw the distinctions they draw today? Are there additional factors the board should consider in determining whether a fund is an institutional fund? Would a different approach result in better distinctions? If we cannot distinguish between retail and institutional funds, should we amend rule 2a–7 to apply the minimum daily liquidity requirements we propose for institutional funds to all funds? Would setting the same minimum daily liquidity requirement for institutional and retail funds impose unnecessary costs (in terms of lower yields) on retail investors in light of retail funds' reduced liquidity needs?

Might one effect of the proposed amendments be that funds currently offering two classes of shares, one retail and one institutional, would decide to divide the fund into two funds and manage them differently? Would one of the advantages of such a result be that retail investors would not bear the cost of maintaining liquidity for institutional investors? Would a disadvantage be the loss to retail investors of the economies of scale in these multi-class funds? What additional advantages and disadvantages do commenters foresee? Retail investors may not be aware of the higher redemption rates that institutional funds experienced last fall. Should we consider requiring institutional funds to provide additional disclosures regarding the risk to the fund of large redemptions?

Tax Exempt Money Market Funds. We propose to exempt tax exempt funds from the minimum daily liquidity requirements.[198] We understand that most of the portfolios of tax exempt funds consist of longer term floating- and variable-rate securities with seven day demand features from which the fund obtains much of its liquidity. We understand that these funds are unlikely

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[191] This information is based on analysis of data from the iMoneyNet Money Fund Analyzer database.

[192] *See supra* note 178.

[193] *See, e.g.,* ICI, Frequently Asked Questions About Money Market Funds, *http://www.ici.org/faqs/faqs_money_funds* (describing (i) institutional money market funds as ''held primarily by businesses, governments, institutional investors, and high-net worth households'' that as of July 2008, held 63 percent of all money market fund assets and (ii) retail money market funds as ''offered primarily to individuals with moderate-sized accounts'' that as of July 2008, held around 37 percent of all money market fund assets); iMoneyNet home page, *http://imoneynet.com/* (separates information and analysis on money market funds into institutional and retail categories); Crane Data, Money Fund Intelligence (June 2009) at 30, *http://www.cranedata.us/products/money-fund-intelligence/* (select issue 2009–06–01 (Vol.4, #6)) (classifying money market funds as institutional or individual based on expense ratio, minimum investment and ''who they're sold to'').

[194] A ''master-feeder fund'' is an arrangement in which one or more funds with identical investment objectives (''feeder funds'') invest all their assets in a single fund (''master fund'') with the same investment objective. Investors purchase securities in the feeder fund, which is an open-end fund and a conduit to the master fund. *See* H.R. Rep. No. 622, 104th Cong., 2d Sess., at 41 (1996) (''H.R. Rep. No. 622''); *see generally* Exemption for Open-End Management Investment Companies Issuing Multiple Classes of Shares; Disclosure by Multiple Class and Master Feeder Funds; Voting on Distribution Plans; Final Rules and Proposed Rule, Investment Company Act Release No. 20915 (Feb. 23, 1995) [60 FR 11876, 11876–77 (Mar. 2, 1995)].

[195] Proposed rule 2a–7(c)(5)(v).

[196] Proposed rule 2a–7(a)(18) (defining ''institutional fund'').

[197] Proposed rule 2a–7(a)(24) would define ''retail fund'' as any money market fund that the board of directors has not determined within the calendar year is an institutional fund.

[198] Proposed rule 2a–7(c)(5). Rule 2a–7 defines a ''tax exempt fund'' as a money market fund that holds itself out as distributing income exempt from regular federal income tax. Rule 2a–7(a)(24).

to have investment alternatives that would permit them to meet a daily liquidity requirement.[199] We request comment on whether tax exempt money market funds could meet a daily liquidity requirement, such as we have proposed for taxable retail funds. Do tax exempt retail money market funds nevertheless have similar liquidity requirements as taxable retail funds? If so, should rule 2a–7 treat them differently and how?

b. Minimum Weekly Liquidity Requirement

We propose that all money market funds (including tax exempt funds) also be subject to a minimum weekly liquidity requirement (''minimum weekly liquidity requirement''). Specifically, retail and institutional funds could not acquire any securities other than U.S. Treasury securities or securities (including repurchase agreements) that mature or are subject to a demand feature exercisable and payable in five business days (together with cash, ''weekly liquid assets'') if, immediately after the acquisition, (i) the retail fund would have invested less than 15 percent of its total assets in weekly liquid assets and (ii) the institutional fund would have invested less than 30 percent of its total assets in weekly liquid assets.[200]

The proposed minimum weekly liquidity requirement would supplement the proposed minimum daily liquidity requirement (discussed above) and give greater assurance that money market funds could meet their statutory obligations to redeem shareholders in times of market turbulence. We estimate that under our proposed minimum weekly liquidity requirement, approximately 93 percent of retail funds and 91 percent of institutional funds would have been able to satisfy the level of redemption demands during the periods of greatest redemption pressure last fall without having to sell portfolio securities.[201]

We request comment on the minimum weekly liquidity requirements. Would a minimum daily liquidity requirement alone be sufficient to allow funds to adequately manage risk in the event of unexpected shareholder redemptions in excess of the daily threshold and market illiquidity? Are the proposed minimums of 15 percent of a retail fund's total assets and 30 percent of an institutional fund's total assets sufficient?[202] Should we, as the ICI Report suggests, adopt the same (20 percent of total assets) test for both retail and institutional funds? As discussed above, we designed our minimum weekly liquidity requirements so that more than 90 percent of retail and institutional funds could have met redemption requests during the week of September 15–19, 2008 without selling portfolio securities. Should we set the threshold lower, such as at 80 percent or 70 percent? Should we set the threshold higher at 95 percent or 100 percent? The weekly liquidity requirement would be essentially the same as the daily liquidity requirement, except that the fund must be able to access cash on a weekly rather than daily basis. Compliance with the test would be determined upon the acquisition of a security, and demand features could be used to determine the maturity of a portfolio security for purposes of the test.

We propose to treat as weekly liquid assets for purposes of the weekly liquidity requirements, the same securities that would be daily liquid assets except that the requirement for maturing securities or demand features would be five business days rather than one.[203] The ICI Report suggests that we ought to treat as a weekly liquid asset a security issued by an agency of the U.S. Government that, when originally issued, had a maturity of 95 days or less.[204] Is there a basis on which to treat these agency securities as weekly liquid assets? If so, why should the maturity of the security be 95 days based on original issue rather than specifying a period remaining to maturity? We urge commenters supporting such treatment to submit market data to support their views.

c. General Liquidity Requirement

As discussed above, the daily and weekly liquidity requirements would be minimum requirements a fund would have to satisfy upon acquisition of a security. A fund's liquidity needs, however, depending upon the volatility of its cash flows, may be greater. Therefore, we also propose to require that a money market fund at all times hold highly liquid securities sufficient to meet reasonably foreseeable redemptions in light of its obligations under section 22(e) of the Act and any commitments the fund has made to shareholders, such as undertaking to pay redemptions more quickly than seven days.[205]

To comply with this condition, we would expect money market funds to consider a number of factors that could affect the fund's liquidity needs. For example, a money market fund would have to understand the characteristics of its investors and their likely liquidity needs. A volatile investor base, *e.g.,* one consisting of a few relatively larger investors that are likely to make significant redemptions, would require a fund to maintain greater liquidity than a stable investor base, which is generally associated with a retail fund with many hundreds or thousands of smaller investors. With this information, a fund manager could take different steps to protect the fund from greater liquidity risk. For example, the fund manager could increase the amount of daily or weekly liquid assets above those required by the daily and weekly requirements, or could decline to accept new investments from investors whose liquidity needs are inconsistent with the objectives of the management of the fund.[206]

We request comment on this proposed requirement for liquidity. Should we consider incorporating specific objective standards for liquidity in this requirement? Should we provide

[199] *See* ICI Report, *supra* note 6, at 74.

[200] Proposed rule 2a–7(c)(5)(iv). The term ''weekly liquid assets'' would be defined in proposed rule 2a–7(a)(32).

[201] During the week of September 15–19, 2008, approximately 6% of retail funds had net redemptions that exceeded 15%, and 9% of institutional money market funds had redemptions that exceeded 30% of assets. In addition, in the 52 weeks preceding September 17, 2008, roughly the same portion of redemption requests in institutional and retail funds (less than 2%) would have exceeded the weekly liquidity requirements. This information is based on analysis of data from iMoneyNet Money Fund Analyzer database.

[202] We note that for most weeks during the past year, prime institutional money market funds maintained over 30% of their assets in securities maturing in seven days or less. This information is based on analysis of data from iMoneyNet Money Fund Analyzer database.

[203] *Compare* proposed rule 2a–7(a)(8) with proposed rule 2a–7(a)(32).

[204] *See* ICI Report, *supra* note 6, at 74.

[205] Proposed rule 2a–7(c)(5)(ii). Our proposal is similar to the liquidity standard we proposed last year in the proposal on NRSRO references. *See* NRSRO References Proposal, *supra* note 105, at Section III.A.2. Among the commenters that specifically addressed that proposed standard, two suggested that codification of the standard was not needed because money market fund advisers already understand and adhere to the current standards. *See* Comment Letter of Fidelity Management & Research Company (Aug. 29, 2008) (File No. S7–19–2008); Comment Letter of the Securities Industry and Financial Markets Association Credit Rating Agency Task Force (Sept. 4, 2008) (File No. S7–19–2008). A third suggested eliminating the standard because it involves ''subjective, forward-looking estimates,'' while retaining a proposed maximum level for illiquid securities holdings to ''preserve a clearer bright-line test''). *See* Comment Letter of Morrison & Foerster (Sept. 5, 2008) (File No. S7–19–2008).

[206] We do not mean to suggest that each money market fund should minimize the volatility of cash flows, but rather should limit its liquidity risks. Some money market funds with the most volatile shareholder base manage liquidity risk by, for example, investing exclusively in overnight repurchase agreements or Treasury debt.

guidance regarding the steps fund advisers could take to evaluate the fund's liquidity needs? If so, what should the guidance be?

Because the obligation would be ongoing, we believe a fund should adopt policies and procedures to assure that appropriate efforts are undertaken to identify risk characteristics of shareholders, particularly those that hold their securities through omnibus accounts, or access the fund through ''portals'' or through other arrangements that provide the fund with little or no transparency with respect to the beneficial shareholder. We are not proposing to amend rule 2a–7 to require that funds adopt specific procedures because we believe those procedures would be required by rule 38a–1, the ''compliance rule'' under the Investment Company Act, if we adopt the proposed general liquidity requirement.[207] Should the Commission provide guidance to funds to assist them in determining the adequacy of their policies and procedures? Should we consider specifying any particular aspects of the policies and procedures?

In their consideration of these procedures and in their oversight of their implementation, fund directors should understand that fund managers' interest in increasing fund assets, and thus their advisory fees, may lead them to accept investors who present greater risks to the fund than they might otherwise have accepted. We urge directors to consider the need for establishing guidelines for advisers to money market funds that address this potential conflict. We are aware of more than one occasion in which a fund adviser (or its affiliate that served as the principal underwriter to the fund) has marketed the fund to ''hot money'' in order to increase fund assets, which has exposed the fund to substantially higher risks.

3. Stress Testing

We are also proposing to amend rule 2a–7 to require the board of directors of each money market fund using the amortized cost method to adopt procedures providing for periodic stress testing of the money market fund's portfolio.[208] The procedures would require testing of the fund's ability to maintain a stable net asset value per share based upon certain hypothetical events, including an increase in short-term interest rates, an increase in shareholder redemptions, a downgrade of or default on a portfolio security, and widening or narrowing of spreads between yields on an appropriate benchmark selected by the fund for overnight interest rates and commercial paper and other types of securities held by the fund.

Our proposal would require funds to test for certain hypothetical events, but would not specify other details of the stress testing. The proposal would require that stress tests be conducted at intervals that the board of directors determines appropriate and reasonable in light of current market conditions. This is the same approach that rule 2a–7 currently takes with respect to the frequency of shadow pricing.[209]

The proposed amendments also would leave to the money market fund's board of directors (and the fund manager) the specifics of the scenarios or assumptions on which the tests are based. Boards should, for example, consider procedures that require the fund to test for the concurrence of multiple hypothetical events, *e.g.,* where there is a simultaneous increase in interest rates and substantial redemptions. The proposed amendments also would require that the board receive a report of the results of the testing at its next regularly scheduled meeting, which report must include: (i) The date(s) on which the fund portfolio was tested; and (ii) the magnitude of each hypothetical event that would cause the money market fund to break the buck.[210] Thus, a fund must test each hypothetical event to a degree of severity that it would result in the market-based per share net asset value of the fund to fall below $0.995 (in the case of a fund that is maintaining a stable net asset value at $1.00). The proposed amendment also would require the written procedures to include the provision of an assessment by the adviser of the fund's ability to withstand the events (and concurrent occurrences of those events) that are reasonably likely to occur within the following year.[211] The adviser's assessment would provide the fund board context within which to evaluate the magnitude of the events that would cause the fund to break the buck. Finally, funds would be required to maintain records of the stress testing for six years, the first two years in an easily accessible place.[212]

We believe that the proposed stress testing procedures would provide money market fund boards a better understanding of the risks to which the fund is exposed and would give managers a tool to better manage those risks. We understand that stress testing is already a best practice followed by many money market funds. The ICI Report recommends that rule 2a–7 require money market funds regularly to ''stress test'' their portfolios, although it does not suggest a particular means of stress testing.[213] The Institutional Money Market Funds Association provides guidance for its members in stress testing money market fund portfolios,[214] and the ratings agencies stress test the portfolios of money market funds they rate.[215]

We request comment on our proposed stress test requirement. Would this requirement allow fund managers to better understand and manage the risks to which the fund is exposed? Have we identified the correct stress events? If not, what additional or alternative scenarios or assumptions should we require the fund to test? Should we specify at least one base-line stress test that would test the fund portfolio against a combination of two or more events? For example, the rule could require that the market value per share of the fund be tested against an assumed 50 basis point increase in LIBOR and a redemption of 15 percent of fund shares. Are there alternative base-line tests we should consider requiring?

We request comment on our proposal to require that the board receive a report on these tests. Would the report help the board identify when a fund adviser is exposing the fund to greater risks? Should the board only receive a report when the tests indicate a particular level of risk? If so, what particular level of risk should the rule identify? Should we consider including additional information in the report, and if so, what should it be? Should the rule provide for a minimum frequency of testing? If so, what should be the frequency (*e.g.,* monthly, weekly, or a shorter period)? Should we consider

[207] *See* rule 38a–1(a)(1) (requiring funds to adopt and implement written policies and procedures reasonably designed to prevent violation of the federal securities laws by the fund).

[208] Proposed rule 2a–7(c)(8)(ii)(D)(*1*).

[209] Rule 2a–7(c)(7)(ii)(A)(*1*).

[210] Proposed rule 2a–7(c)(8)(ii)(D)(*2*).

[211] Proposed rule 2a–7(c)(8)(ii)(D)(*3*).

[212] Proposed rule 2a–7(c)(11)(vii).

[213] ICI Report, *supra* note 6, at 75.

[214] *See* Institutional Money Market Funds Association, Stress Testing for Money Market Funds (Feb. 2009).

[215] *See, e.g.,* Standard & Poor's, Fund Ratings Criteria, at 9 (2007), *available at http://www2.standardandpoors.com/spf/pdf/events/FundRatingsCriteria.pdf. See also* Financial Regulator Guidance Note 1/08, *supra* note 146, at 5 (requirements of the Irish Financial Services Authority for money market funds domiciled in Ireland include stress testing: ''A money market fund is expected to be subject to monthly portfolio analysis incorporating stress testing to examine portfolio returns under various market scenarios to determine if the portfolio constituents are appropriate to meet pre-determined levels of credit risk, interest rate risk, market risk and investor redemptions.'').

different intervals for different types of money market funds? If so, what intervals would be appropriate for what types of money market funds? Should the frequency depend upon the market-based value of the fund portfolio or other criteria or events?

We note that certain of the hypothetical events we propose funds include in their testing may not be meaningful for some money market funds. For example, U.S. Treasury money market funds (*i.e.,* funds that invest solely in direct obligations of the U.S. government such as U.S. Treasury bills and other short term securities backed by the full faith and credit of the U.S. government) are not likely to experience downgrades of or defaults on those securities. Should these money market funds be exempted from testing certain hypothetical events, such as a downgrade of or default on a portfolio security, that may not present risks to the fund? Are there other money market funds that we should exempt from testing for certain of the proposed hypothetical events? If so, which funds should have exemptions and which events should be exempted from their testing?

The ICI Report suggests that the results of stress testing could be used to evaluate whether a money market fund's liquidity thresholds need to be adjusted.[216] Should we consider imposing minimum liquidity requirements based on the results of a particular stress test? For example, should we require that a fund invest 50 percent of its portfolio in daily or weekly liquid assets if a five percent increase in shareholder redemptions would cause the fund to break the buck? If we considered imposing minimum liquidity requirements, should they be different for retail and institutional funds?

D. Diversification

Rule 2a–7 requires a money market fund's portfolio to be diversified, both as to the issuers of the securities it acquires and to the guarantors of those securities.[217] Generally, money market funds must limit their investments in the securities of any one issuer (other than Government securities), to no more than five percent of fund assets.[218] They must also generally limit their investments in securities subject to a demand feature or a guarantee to no more than ten percent of fund assets from any one provider.[219] The Commission adopted these requirements in order to limit the exposure of a money market fund to any one issuer or guarantor.[220]

The issuer diversification provisions of the rule generally were not implicated by the market turbulence last fall.[221] The Reserve Primary Fund, for example, held only 1.2 percent of its assets in Lehman Brothers commercial paper, well below what rule 2a–7 permits. The market turbulence did, however, implicate the guarantor and demand feature diversification provisions—many funds (particularly tax exempt funds) were heavily exposed to bond insurers, and some were heavily exposed to a few major securities firms that served as liquidity providers.[222]

Should we propose to further restrict the diversification limits of the rule? If so, by how much should we reduce them? Should the five percent diversification limit for issuers be reduced to, for example, three percent? Would it be possible to further reduce the guarantor diversification limits without reducing the quality of portfolio securities? Even a diversification limitation of one percent would not preclude a fund from breaking a buck if the security should sustain sufficient losses as did the securities issued by Lehman Brothers. Moreover, such a diversification limit may force funds to invest in relatively lower quality securities. If so, might lower diversification limits increase the likelihood of a default or other credit event affecting a money market fund while diminishing the impact of such an event on the fund? We request that commenters address the tradeoffs of lower diversification limits for different types of money market funds.

Last fall, money market funds did appear to be extensively exposed to securities issued by participants in the financial sector, which contributed significantly to the difficulties they experienced.[223] Money market funds are not subject to any industry concentration limitations under rule 2a–7. Should we consider proposing such a limitation? If we did, what should the concentration limit be? Are distinctions among industry sectors sufficiently clear that a concentration limitation would be meaningful?[224]

E. Repurchase Agreements

Money market funds typically invest a significant portion of their assets in repurchase agreements, many of which mature the following day and provide an immediate source of liquidity.[225] In a typical repurchase agreement, a fund purchases securities from a broker-dealer or a bank (''counterparty''), upon an agreement that the counterparty will repurchase the same securities at a specified price, at a later date. The securities purchased serve as the collateral for the agreement.

Money market funds may treat the acquisition of a repurchase agreement as an acquisition of the collateral underlying the repurchase agreement for purposes of meeting rule 2a–7's diversification requirement, provided that the repurchase agreement is ''collateralized fully.''[226] A repurchase

[216] *See* ICI Report, *supra* note 6, at 75.

[217] Rule 2a–7(c)(4)(i). The diversification requirements of rule 2a–7 differ in significant respects from the requirements for diversified management investment companies under section 5(b)(1) of the Act. A money market fund that satisfies the applicable diversification requirements of the paragraphs (c)(4) and (c)(5) of the rule is deemed to have satisfied the requirements of section 5(b)(1). Rule 2a–7(c)(4)(v). Subchapter M of the Internal Revenue Code contains other diversification requirements for a money market fund to be a ''regulated investment company'' for federal income tax purposes. 26 U.S.C. 851 *et seq. See also* 1990 Proposing Release, *supra* note 22, at n.25.

[218] Rule 2a–7(c)(4)(i)(A). The rule contains a safe harbor where a taxable and national tax exempt fund may invest up to 25 percent of its assets in the first tier securities of a single issuer for a period of up to three business days after acquisition (but a fund may use this exception for only one issuer at a time). Rule 2a–7(c)(4)(i)(A).

[219] Rule 2a–7(c)(4)(iii). With respect to 25 percent of total assets, holdings of a demand feature or guarantee provider may exceed the 10 percent limit subject to certain conditions. See rule 2a–7(c)(4)(iii)(A), (B), and (C). *See also* rule 2a–7(a)(8) (definition of ''demand feature'') and (a)(15) (definition of ''guarantee'').

[220] *See* 1990 Proposing Release, *supra* note 22, at II.1. (''Diversification limits investment risk to a fund by spreading the risk of loss among a number of securities.'').

[221] The positions held by funds in distressed securities were in almost all cases well below the rule's diversification limits.

[222] *See, e.g.,* Brunnermeier, *supra note 66,* at 87.

[223] *See, e.g.,* U.S. Dollar Money Market Funds, *supra* note 17, at 67 (mid-2008 holdings of 15 largest prime money market funds showed they had invested $1 trillion, or half of their portfolios, with non-U.S. banks).

[224] In 1992, our staff observed that ''the current [statutory] treatment of 'concentration' suffers from problems of industry definition. There is no clear standard to determine what constitutes an 'industry,' much less 'a group of industries.' Indeed, as the boundaries between different industries erode and the trend toward corporate diversification and conglomeration continues, it is often difficult to fit companies into distinct industry categories * * *.'' Division of Investment Management, U.S. Securities and Exchange Commission, Protecting Investors: A Half Century of Investment Company Regulation, at n.103 (May 1992).

[225] In 2008, repurchase agreements accounted for 26.4% of taxable Government money market funds' total net assets and 9.1% of taxable non-Government money market funds' total net assets. *See* 2009 Fact Book, *supra* note 7, at 150–51, Tables 41 & 42.

[226] *See* rule 2a–7(c)(4)(ii)(A). We have allowed this ''look-through'' treatment, for diversification purposes, based on the notion that a money market fund looks to the collateral rather than the counterparty as the ultimate source of repayment. *See* Treatment of Repurchase Agreements and Refunded Securities as an Acquisition of the Underlying Securities, Investment Company Act

agreement collateralized fully must, among other things, qualify for an exclusion from any automatic stay of creditors' rights against the counterparty under applicable insolvency law.[227] We propose two amendments to rule 2a–7 affecting a money market fund's investment in repurchase agreements.

First, we propose to limit money market funds to investing in repurchase agreements collateralized by cash items or Government securities in order to obtain special treatment under the diversification provisions of rule 2a–7.[228] Such a limitation would make it less likely that, in the event of the default of a counterparty during a period of market turmoil such as last fall, a money market fund would experience losses upon the sale of collateral that had become illiquid. Such a consequence is more likely in the case of a default by a large counterparty when, as a result, many investors in repurchase agreements seek to liquidate similar collateral at the same time.[229]

We request comment on this amendment. We understand that most money market funds that take advantage of the diversification ''look-through'' provision enter into repurchase agreements that are collateralized by Government securities. Is our understanding correct? If so, would this amendment have a significant impact on money market funds? Would the amendment significantly reduce the risk of losses upon the default of a repurchase agreement counterparty? Would it negatively impact money market funds' yields? Should we apply this limitation to repurchase agreements that are not collateralized fully, and thus do not qualify for the special ''look-through'' treatment?

Second, we propose to require that the money market fund's board of directors or its delegate evaluate the creditworthiness of the counterparty, regardless of whether the repurchase agreement is collateralized fully.[230] We eliminated this requirement in 2001 in light of amendments to relevant bankruptcy law that protected funds from the automatic stay of creditors' rights under applicable bankruptcy law.[231] The events of last fall, which involved the failure of a large investment bank holding company that served as a counterparty, suggest we should revisit this determination.[232] We are concerned that in the midst of a crisis following the bankruptcy of a counterparty, a money market fund may find it difficult to protect fully its interests in the collateral without incurring losses.[233] A fund should seek to avoid such a crisis by limiting its counterparties to those that are creditworthy. We request comment on this proposed amendment.

F. Disclosure of Portfolio Information

1. Public Website Posting

The Commission is proposing to amend rule 2a–7 to require money market funds to disclose information about their portfolio holdings each month on their websites. Specifically, a fund would be required to disclose the fund's schedule of investments, as prescribed by rules 12–12 to 12–14 of Regulation S–X,[234] identifying, among other things, the issuer, the title of the issue, the principal amount of the security, and its current amortized cost.[235] The fund would be required to post the information no later than the second business day of the month, current as of the last business day of the previous month, and would have to maintain the information on the website for at least twelve months.[236]

Currently, money market funds must report portfolio holdings information to us four times a year, no earlier than within 60 days of the close of the covered period.[237] Many funds today provide this information to their investors much more frequently on their websites, with some funds updating information each day.[238]

We understand that the greater transparency provided by many funds today responds to demands from investors, particularly institutional investors, who wish to have a better understanding of the current risks to which the fund is exposed.[239] Those investors find that the quarterly reports are too infrequent in light of the rapid turnover of money market fund portfolios. We believe that the greater transparency of fund portfolios is a positive development by which investors can exert influence on risk-taking by fund advisers, and thus reduce the likelihood that a fund will break the buck.

We request comment on the proposed monthly portfolio disclosure requirement. Should we require more information from funds than what we have proposed? If so, what additional information should we require? Should

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Release No. 25058 (July 5, 2001) [66 FR 36156 (July 11, 2001)] (''2001 Repo Rule Adopting Release''), at Background. Rule 5b–3 allows the same treatment for purposes of section 5 and section 12(d)(3) of the Act. The rule 5b–3(c)(1) definition of collateralized fully, which is cross-referenced by rule 2a–7(a)(5), sets forth the related conditions. Money market funds may enter into repurchase agreements that are not collateralized fully. Any agreement or portion of agreement that is not collateralized fully would be deemed an unsecured loan. As such the loan itself would have to meet the quality requirements set forth in rule 2a–7, both with respect to the minimal credit risk and the high quality rating, as well as the five percent diversification test. *See* 1991 Adopting Release, *supra* note 20, at n.31.

[227] *See* rule 5b–3(c)(1)(v).

[228] Proposed rule 2a–7(a)(5). Under the current definition of collateralized fully, a money market fund may look through repurchase agreements collateralized with cash items, Government securities, securities with the highest rating or unrated securities of comparable credit quality. Rule 5b–3(c)(1)(iv). Repurchase agreements have traditionally been collateralized with U.S. Treasury and agency securities, but over the years borrowers have increasingly used investment grade corporate bonds, mortgage-backed securities and other potentially illiquid securities. *See* Martin Duffy et al., *supra* note 191, at 3. Our staff's examination of the portfolio holdings in the 15 largest money market fund complexes last spring indicated that approximately 75% of the collateral supporting repurchase agreements held by the funds consisted of Government securities (48.3% agencies and 26.4% U.S. Treasuries). The exam further indicated that the remaining collateral consisted of a variety of instruments, such as equities, commercial paper, corporate notes, and mortgage loan obligations.

[229] If the counterparty defaults, a money market fund might be required to dispose of the collateral as soon as possible to the extent that the collateral, now part of the fund's portfolio, does not meet the fund's maturity or liquidity requirements. Such requirements do not apply to the collateral when it is not part of the fund's portfolio. *See* 1991 Adopting Release, *supra* note 20, at n.33 and accompanying text.

[230] Proposed rule 2a–7(c)(4)(ii)(A). It appears that this evaluation is already being made in many fund complexes. *See* ICI Report, *supra* note 6, at n.90.

[231] *See* 2001 Repo Rule Adopting Release, *supra* note 226, at nn.18–20 and accompanying text.

[232] We understand that a number of money market funds discontinued entering into repurchase agreements with The Bear Stearns Companies Inc. (''Bear Stearns'') when it was threatened with collapse in March 2008. ICI Report, *supra* note 6, at 51.

[233] *See* Stephen Morris & Hyun Song Shin, *Financial Regulation in a System Context,* Brookings Papers on Economic Activity, Fall 2008, at 229, 239 (noting that ''if Bear Stearns had become illiquid, and the assets pledged as collateral reverted to the money market funds, they would have been forced to sell those assets quickly, possibly at a large loss.''). *Cf. Calyon N.Y. Branch* v. *Am. Home Mortg. Corp. (In re Am. Home Mortg., Inc.),* 379 B.R. 503, 520–22 (Bankr. D. Del. 2008) (Holding that seller in bankruptcy was not required to transfer to the buyer the right to service the collateral of the repurchase agreement. The court found that the servicing provisions of the agreement were severable from the repurchase provisions, dismissing the buyer's argument that without the servicing rights the buyer's ability to liquidate the collateral would have been impaired.).

[234] 17 CFR 210.12–12 to 12–14.

[235] Proposed rule 2a–7(c)(12).

[236] *Id.*

[237] Money market funds must provide a full schedule of their portfolio holdings in quarterly filings to the Commission. *See* Form N–CSR [17 CFR 274.128] (form used by registered management investment companies to file shareholder reports); Form N–Q [17 CFR 274.130] (form used by registered management investment companies to file quarterly reports of portfolio holdings after the first and third quarters).

[238] *See* Colleen Sullivan & Mike Schnitzel, *Money Funds Move to Update Holdings Faster,* Fund Action, Sept. 29, 2008, *available at http://www.fundaction.com/pdf/FA092908.pdf.*

[239] *See id.*

we require that money market funds also post their market-based net asset value per share and the market-based prices of their portfolio securities? This information would enable investors to understand the fund's exposure to distressed securities (the market value of which would be less than the amortized cost). In addition, it could help investors understand the risk that the fund may be unable to maintain a $1.00 stable net asset value. Currently, only larger, more sophisticated investors may be able to gauge this risk, by themselves estimating the market value of portfolio securities disclosed on fund websites. Thus, a requirement that funds disclose the market-based values may help to level the playing field for all investors. On the other hand, we acknowledge that disclosure of shadow pricing could cause certain investors to redeem their holdings once the shadow price drops below a certain threshold and thus potentially introduce greater instability.

We request comment on how investors might react to the disclosure of market-based values and the consequences to funds and shareholders if such information were disclosed. Would investors seek to redeem their shares when the fund's market-based net asset value falls below a certain threshold because of concerns that other investors may seek to redeem? Would market analysts follow and report this information and thereby cause investors to redeem if the fund's market-based net asset value falls below a certain threshold? Would the disclosure of market-based values, in addition to amortized cost, confuse investors, particularly retail investors? Are there costs to disclosing this information, and, if so, what are they? Alternatively, would this information provide shareholders with useful information regarding the fund's risk characteristics? Would it enable investors to make better informed investment decisions? Would this information benefit investors, and, if so, how? If the market-based values were required to be disclosed, how frequently should they be disclosed? Would monthly disclosure be frequent enough for investors to understand how often and to what extent a money market fund's market-based share price deviates from the $1.00 stable share price?

Should we omit any of the proposed disclosure requirements? If so, what information should be omitted from the proposed requirement, and why?

Each money market fund would have to update its portfolio schedule as of the end of each month and post the update no later than two business days after the end of the month. Should we provide for a longer delay to prevent cash investors other than shareholders from trading along with the fund, to the possible detriment of the fund and its shareholders? The ICI Report recommended monthly disclosure with a two-day delay, asserting that ''front running'' concerns are less of a risk for money market funds than other types of mutual funds.[240] We understand that funds that already post portfolio schedules frequently have come to the same conclusion. Should funds be required to provide more frequent disclosure of portfolio holdings (*e.g.,* weekly or biweekly)?

The amendments would require that a fund post the information on its website for at least 12 months. Should the information be accessible on the website for a longer or shorter time period? Should we require this information somewhere other than on the fund's website? Do all money market funds have websites?

2. Reporting to the Commission

We are also proposing a new rule requiring money market funds to provide the Commission a monthly electronic filing of more detailed portfolio holdings information.[241] The information would enable the Commission to create a central database of money market fund portfolio holdings, which could enhance our oversight of money market funds and our ability to respond to market events.[242]

Our current information on money market fund portfolios is limited to quarterly reports filed with us which, as noted above, quickly become stale. Moreover, the reports are not filed in a format that allows us to search expeditiously across portfolios or within a portfolio to identify securities that may raise concerns. In 2007, our staff was not able to ascertain quickly which money market funds held SIVs, and last fall we had to engage in lengthy and time-consuming inquiries to determine which money market funds held commercial paper issued by Lehman Brothers after it declared bankruptcy. Further, if we had had such data immediately available to us, we could have provided additional assistance to the Treasury Department or the Federal Reserve Board in structuring the programs they put into place to protect investors.[243] In preparing this release we have relied in part on data about money market funds available only through industry associations and publications.[244]

Proposed rule 30b1–6 would provide us information that would assist our staff in analyzing the portfolio holdings of money market funds, and thus enhance our understanding of the risk characteristics of individual money market funds and money market funds as a group and industry trends. We would be able to identify quickly those funds that are holding certain types of securities or specific securities, such as distressed securities, and funds that have unusual portfolios that may involve greater risks than are typical (*e.g.,* funds that have higher gross yields).

Although the portfolio reports to the Commission are not primarily designed for individual investors, we would expect to make the information available to the public two weeks after their filing. We anticipate that academic researchers, financial analysts and economic research firms would use this information to study money market fund holdings and evaluate their risk information. Their analyses may further help investors and regulators better understand risks in money market funds. In addition, we believe that delaying the public availability of this information would alleviate possible concerns about the public disclosure of the detailed portfolio holdings information contained in the filing, without compromising its utility.[245]

Proposed rule 30b1–6 would require money market funds to file a monthly portfolio holdings report on new Form

[240] *See* ICI Report, *supra* note 6, at 93.

[241] Proposed rule 30b1–6.

[242] In 1995, the Commission proposed, but did not adopt, a similar rule that would have required money market funds to file quarterly reports of portfolio holdings. Money Market Fund Quarterly Reporting, Investment Company Act Release No. 21217 (July 19, 1995) [60 FR 38467 (July 26, 1995)]. *See also* Rulemaking Petition from Fund Democracy, *et al.* (Jan. 16, 2008) (File No. 4–554) (recommending that the Commission require money market funds to make nonpublic monthly electronic filings of their portfolio holdings).

[243] The Treasury's Guarantee Program requires a participating money market fund to provide a schedule of its portfolio holdings if its market-based net asset value falls below 99.75 percent of its stable net asset value. *See* U.S. Department of the Treasury, ''Guarantee Agreement (Stable Value),'' ¶ 5(b), *available at http://www.treas.gov/offices/domestic-finance/key-initiatives/money-market-docs/Guarantee_Agreement_Stable-Value.pdf.*

[244] *See, e.g., supra* note 68.

[245] As discussed above, we understand the confidentiality of certain portfolio holdings information is not of critical importance to money market funds. Accordingly, the proposed amendments to rule 2a–7 would require money market funds to disclose certain monthly portfolio holdings information on their websites within two days after the end of month. *See also* ICI Report, *supra* note 6, at 93 (recommending that funds disclose monthly portfolio holdings information after a two-day delay). Here, however, the more detailed information included in the filing to the Commission may present more significant concerns.

N–MFP (for ''money fund portfolio'' reporting) no later than the second business day of each month, current as of the last business day of the previous month.[246] Proposed Form N–MFP would require the fund to report, with respect to each portfolio security held on the last business day of the prior month, among other things: (i) The name and CIK number of the issuer; (ii) the title of the issue; (iii) the CUSIP number or other unique identifier; (iv) the category of investment (*e.g.,* Treasury debt, government agency debt, corporate commercial paper, structured investment vehicle notes, etc.); (v) the current credit ratings of the issuer and the requisite NRSROs giving the ratings; (vi) the maturity date as determined under rule 2a–7; (vii) the final legal maturity date; (viii) whether the maturity date is extendable; (ix) whether the instrument has certain enhancement features; (x) the identity of any enhancement provider; (xi) the current credit rating of the enhancement provider; (xii) the principal amount; (xiii) the current amortized cost value; (xiv) certain valuation information (*i.e.,* whether the inputs used in determining the value of the securities are Level 1, Level 2 or Level 3,[247] if applicable); and (xv) the percentage of the money market fund's assets invested in the security.[248] In addition, Form N–MFP would require funds to report to us information about the fund's risk characteristics, such as the fund's dollar weighted average maturity of its portfolio and its 7-day gross yield.

Given the rapidly changing composition of money market fund portfolios, which is largely the result of securities maturing, we believe that monthly reports would improve the timeliness and relevance of portfolio information. Once a money market fund has established a system for tagging and filing a Form N–MFP, we expect the marginal costs of filing additional reports would be minimal.[249]

Under the proposed rule, Form N–MFP would be filed electronically through the Commission's EDGAR system in an eXtensible Markup Language (''XML'') tagged data format.[250] We understand that money market funds already maintain the requested information, and therefore would need only to tag the data and file the reports with the Commission.[251] We anticipate that, in the future, many funds may be able to collect, tag, and file this information with the Commission through even more efficient, automated processes, thereby minimizing the related costs and potential for clerical error.

We request comment on the proposed monthly portfolio reporting requirement. Should we require funds to file the portfolio holdings report on a more frequent basis? As discussed above, we intend to make this information publicly available two weeks after the report is filed with the Commission. Would such a delay alleviate concerns about possible front-running or other possible harms that might be caused by making the information public? Should the lag time between the filing of the form and its public availability be longer or shorter? Should the information be immediately available to the public upon filing? Should we instead provide that all or a portion of the requested information be submitted in nonpublic reports to the Commission? If so, please identify the specific items that should remain nonpublic and explain why.

Proposed Form N–MFP requires money market funds to disclose certain items that would be relevant to an evaluation of the risk characteristics of the fund and its portfolio holdings. Should we require additional or alternative information, such as the fund's client concentration levels, the percentage of the issue held by the fund, or last trade price and trade volume for each security? [252] Should we require funds to disclose market-based values (including the value of any credit support agreement), which would allow us to identify funds that have market-based net asset values that sufficiently deviate from their amortized cost that they present a risk of breaking the buck? Would the two-week delay in making the information publicly available mitigate any concerns about the disclosure of this information? Alternatively, should we require funds to provide the market-based values information to us on a nonpublic basis? [253] If funds were required to provide market-based values information to us on a nonpublic basis, should we require funds to provide this information more frequently once the fund's net asset value per share falls below a certain threshold? If so, how frequently should funds be required to provide this information (*e.g.,* weekly or daily) and what should be the threshold (*e.g.,* $0.9975)?

Should we omit any proposed disclosure requirement? Are there specific items that the proposed form would require that are unnecessary or otherwise should not be required?

We request comment on feasible alternatives that would minimize the reporting burdens on money market funds.[254] We also request comment on the utility of the reports to the Commission in relation to the costs to money market funds of providing the reports.[255] In addition, we request comment on whether funds should be permitted to post a human readable version of their Forms N–MFP on their Web sites to satisfy the proposed monthly Web site disclosure requirement.

The Commission anticipates that the data to be required by proposed Form N–MFP would be clearly defined and often repetitive from one month to the next. Therefore, we believe the XML format would provide us with the necessary information in the most timely and cost-effective manner. Should the Commission allow or require the form to be provided in a format other than XML, such as eXtensible Business Reporting Language (''XBRL'')? Is there another format that is more widely used or would be more

[246] The portfolio securities information that money market funds currently must report is more limited in scope, and includes information about the issuer, the title of the issue, the balance held at the close of the period, and the value of each item at the close of the period. *See* Form N–Q, Item 1 [17 CFR 274.130]; Rules 12–12 to 12–14 of Regulation S–X [17 CFR 210.12–12 to 12.14].

[247] *See* Financial Accounting Standards Board, *Statement of Financial Accounting Standards No. 157, ''Fair Value Measurement,'' available at http://www.fasb.org/cs/BlobServer?blobcol=urldata&blobtable=MungoBlobs&blobkey=id&blobwhere=1175818754924&blobheader=application%2Fpdf.*

[248] In addition, proposed Form N–MFP would include an ''Explanatory Notes'' item to permit funds to add miscellaneous information that may be material to other disclosure in the form.

[249] *See also infra* Section V.

[250] We anticipate that the XML interactive data file would be compatible with a wide range of open source and proprietary information management software applications. Continued advances in interactive data software, search engines, and other web-based tools may further enhance the accessibility and usability of the data.

[251] We understand that many funds often provide this type of information in different formats to various information services and third-parties, including NRSROs. Standardizing the data format in proposed Form N–MFP may encourage standardization across the industry, resulting in cost savings for money market funds.

[252] *See* Rulemaking Petition from Fund Democracy, *supra* note 242 (recommending that the Commission require money market funds to disclose to the Commission, among other things, the percentage of an issue owned by a fund and its affiliates and the last trade price and trade volume for each portfolio security).

[253] *See supra* discussion at paragraph following note 239 and paragraph preceding note 240.

[254] *See* section 30(c)(2)(A) of the Investment Company Act (requiring Commission to consider and seek public comment on feasible alternatives to the required filing of information that minimize reporting burdens on funds).

[255] *See* section 30(c)(2)(B) of the Investment Company Act (requiring Commission to consider and seek public comment on the utility of information, documents and reports to the Commission in relation to the associated costs).

appropriate for the required data? Is there a need for more detailed categories of data? What would be the costs to funds of providing data in the XML format? Would there be a disproportionate cost burden on smaller fund companies? Is there another format that would be less costly but still allow investors and analysts easily to view (or download) and analyze the data from a central database? Should the Commission use the EDGAR database or should it create a new database? Should the Commission consider the implementation of reporting on Form N–MFP initially through a voluntary pilot program?

3. Amendment to Rule 30b1–5

To avoid unnecessarily duplicative disclosure obligations, we propose to amend rule 30b1–5 to exempt money market funds from the requirement to file their schedules of investments pursuant to Item 1 of Form N–Q, a quarterly schedule of portfolio holdings of management investment companies.[256] We request comment on this exemption. We are not proposing to exempt money market funds from the controls and procedures and certification requirements of Form N–Q. Should we also exempt money market funds from Item 2 of Form N–Q, which requires disclosure of certain information about a fund's controls and procedures, and/or Item 3 of Form N–Q, which requires certain fund officers to file a certification as an exhibit to the form?[257] Should we exempt money market funds from the portions of Items 2 and 3 that pertain to the schedule of investments required by Form N–Q? Alternatively, should we amend Form N–Q and/or rule 30b1–5 to apply similar controls and procedures and certification requirements to the proposed monthly reporting requirement? Should we exempt money market funds from requirements to provide portfolio schedules in Form N–CSR?[258]

G. Processing of Transactions

We are proposing to require that each money market fund's board determine in good faith, at least once each calendar year, that the fund (or its transfer agent) has the capacity to redeem and sell its securities at a price based on the current net asset value per share.[259] This proposed amendment would require money funds to have the operational capacity to ''break a dollar'' and continue to process investor transactions in an orderly manner.[260]

Money market funds that seek to maintain a stable net asset value do not guarantee that they will be able to maintain the stable net asset value. Indeed, each money market fund prospectus must disclose that an investor may lose money by investing in the fund.[261] Nonetheless, we understand that some money market funds do not have in place systems to process purchases and redemptions at prices other than the funds' stable net asset value. In other words, the systems of these money market funds and their transfer agents are ''hardwired'' to process shareholder transactions at only the stable net asset value.

The consequences of such an operational limitation contributed to the delays in redeeming shareholders of The Reserve Primary Fund after that fund broke the buck in September 2008. We understand that all transactions thereafter had to be processed manually, a time-consuming and expensive process that extended the time that shareholders had to wait for the proceeds from their shares.[262]

We believe that money market funds that do not have the operational capacity to price shares according to market values expose their shareholders to unnecessary risks—risks that may render a money market fund unable to meet its obligations under section 22(e) of the Act to pay the proceeds of a redemption within seven days. Therefore, we propose to amend rule 2a–7 to require that a money market fund's board determine in good faith, no less frequently than once each calendar year, that the fund (or its transfer agent) has the capacity to redeem and sell fund shares at prices based on the current net asset value per share. The proposed amendment also clarifies that this capacity includes the capacity to sell and redeem shares at prices that do not correspond to the stable net asset value or price per share.[263]

We request comment on this proposed amendment. Is it appropriate? Should the board play a role in this determination? Should we instead revise the risk-limiting conditions of the rule to require that the fund simply have the capacity to redeem and sell securities at market-based prices? Alternatively, should the rule require that the board determine that the fund has adopted procedures adequate to enable the fund to redeem and sell securities at market-based prices? Or should the rule require that the board approve such procedures? If the rule requires a determination by the board, is an annual determination appropriate? Should the determination be more frequent (*e.g.,* quarterly) or less frequent (*e.g.,* every three years)?

H. Exemption for Affiliate Purchases

The Commission is proposing to amend rule 17a–9, which provides an exemption from section 17(a) of the Act to permit affiliated persons of a money market fund to purchase distressed portfolio securities from the fund.[264] The amendment would expand the circumstances under which affiliated persons can purchase money market

[256] Item 1 of Form N–Q requires funds to file the schedule of investments, as of the close of the reporting period, in accordance with rules 12–12—12–14 of Regulation S–X.

[257] 17 CFR 274.130.

[258] *See supra* note 237.

[259] Proposed rule 2a–7(c)(1) (new last two sentences).

[260] Once a fund has broken the buck, the fund could no longer use the amortized cost method of valuing portfolio securities, and therefore would have to compute share price by reference to the market values of the portfolio with the accuracy of at least a tenth of a cent. *See* 1983 Adopting Release, *supra* note 3, at n.6 and accompanying text. Thus, a fund whose market-based net asset value was determined to be $0.994 would, upon ceasing to use the amortized cost method of valuation, begin to redeem shares at $0.994 (rather than at $0.990). *See generally id.*

[261] Item 2(c)(1)(ii) of Form N–1A [17 CFR 239.15A, 274.11A]. Similar disclosure is required in money market fund advertisements and sales literature. *See* rule 482(b)(4) under the Securities Act of 1933 [17 CFR 230.482]; rule 34b–1(a).

[262] *See* Press Release, The Reserve Fund, Timeframe for Initial Distribution Payment of Reserve Primary Fund (Sept. 30, 2008) (explaining that ''[m]oney market management systems * * * are programmed to accommodate a constant $1.00 NAV [and that making] a distribution to holders that have made redemption requests since September 15, 2008 necessitated a series of system modifications designed to ensure an accurate and equitable distribution of funds''); Press Release, The Reserve Fund, Reserve Primary Fund Disbursement Update (Oct. 15, 2008) (explaining that Reserve Fund investors were ''supported by complex technology at The Reserve as well as their own systems, which had to be adjusted due to the decline of the net asset value below $1.00 on September 16 * * * [and that The Reserve Fund was] working diligently to enhance * * * existing software and add new programs to hasten the distribution process''). *See also* Press Release, The Reserve Fund, Statement About The Reserve Yield Plus Fund (Oct. 17, 2008) (''apologiz[ing] for the delay in meeting redemption requests'' in a short-term bond fund, and explaining that the fund's sponsor needed to ''first move the Fund to a different computer platform that's able to account for a share price below $1.00 * * * [which] wasn't anticipated when the Fund was created'').

[263] Proposed 2a–7(c)(1) (new third sentence).

[264] Absent a Commission exemption, section 17(a)(2) prohibits any affiliated person or promoter of or principal underwriter for a fund (or any affiliated person of such a person), acting as principal, from knowingly purchasing securities from the fund. Rule 17a–9 exempts certain purchases of securities from a money market fund from section 17(a). For convenience, in this Release, we refer to all of the persons who would otherwise be prohibited by section 17(a)(2) from purchasing securities of a money market fund as ''affiliated persons.'' ''Affiliated person'' is defined in section 2(a)(3) of the Act.

fund portfolio securities.[265] The Commission is also proposing a related amendment to rule 2a–7, which would require that funds report all such transactions to the Commission.

1. Expanded Exemptive Relief

In 1996, the Commission adopted rule 17a–9 under the Act to permit affiliated persons to purchase a security from an affiliated money market fund that is no longer an eligible security under rule 2a–7, as long as the purchase price is paid in cash and is equal to the amortized cost of the security or its market price, whichever is greater.[266] The rule codified a series of staff no-action letters in which the staff agreed not to recommend enforcement action to the Commission if affiliated persons of a money market fund purchased portfolio securities from the fund in order prevent the fund from realizing losses on the securities that may otherwise have caused it to break the buck.[267] When we adopted the rule we explained that experience had shown that such transactions appeared to be fair, reasonable, in the best interests of fund shareholders, and consistent with the requirement that money market funds dispose of a defaulted security in an orderly manner as soon as practicable.[268]

The current rule exempts only purchases of securities that are no longer ''eligible securities'' under rule 2a–7 because, for example, their ratings have been downgraded. This limitation served as a proxy indicating that the market value of the security was likely less than its amortized cost value, and thus the resulting transaction was fair to the fund and did not involve overreaching.[269] Since rule 17a–9 was adopted, our staff has responded to several emergency requests for no-action relief for transactions involving portfolio securities that remained eligible securities. In some cases, the fund's adviser anticipated that the securities would be downgraded and sought to arrange a purchase by an affiliate as a preventive measure before the distressed security could impact the fund's market-based net asset value.[270] In other cases, markets for portfolio securities had become illiquid and the affiliated person sought to provide the fund with cash to satisfy redemptions by purchasing portfolio securities.[271] In all cases, the terms of the transactions met all the requirements of rule 17a–9 except that the securities were eligible securities.

Our staff's experience is that these transactions appear to be similarly fair and reasonable and in the best interest of shareholders. We are therefore proposing to extend the exemption to additional types of transactions, which will eliminate the need for affiliated persons to seek no-action assurances from our staff for these transactions when the delay would not be in the best interests of shareholders.

Currently, under rule 17a–9 a security must no longer be an eligible security for an affiliated person of a money market fund to purchase such security. Under the proposed amendment, a money market fund could sell a portfolio security that has defaulted (other than an immaterial default unrelated to the financial condition of the issuer), to an affiliated person, even though the security continued to be an eligible security.[272] Any such transaction would have to satisfy the existing requirements of rule 17a–9.[273]

In addition, we propose to add a new provision to rule 17a–9 that would permit affiliated persons, for any reason, to purchase other portfolio securities (*e.g.,* eligible securities that have not defaulted) from an affiliated money market fund for cash at the greater of its amortized cost value or market value, provided that such person promptly remits to the fund any profit it realizes from the later sale of the security.[274] Because in these circumstances there may not be an objective indication that the security is distressed (and thus that the transaction is clearly in the interest of the fund), the proposed ''claw-back'' provision would eliminate incentives for fund advisers and other affiliated persons to buy securities for reasons other than protecting fund shareholders from potential future losses.

We request comment on all aspects of the proposed expansion of rule 17a–9. Should we instead expand the exemption to include only those portfolio securities that fall within enumerated categories (*e.g.,* securities have defaulted, have become illiquid, have been determined by the board of directors to no longer present minimal credit risk)? If so, what would those categories be and why? Would any additional conditions be needed with respect to particular categories of purchases to control for potential conflicts of interest on the part of the adviser? Is so, what conditions should we include? Is it appropriate to subject only eligible securities that have not defaulted to the proposed claw-back provision? Is such a provision necessary and fair? Should we provide a time limit after purchase when the required claw-back provision would no longer apply? Should we exclude from the claw-back requirement potential payments to money market funds that are subsequently liquidated?

2. New Reporting Requirement

The Commission is also proposing an amendment to rule 2a–7 that would require a money market fund whose securities have been purchased by an affiliated person in reliance on rule 17a–9 to provide us with prompt notice of

[265] The proposed expansion of the rule would not include ''capital support agreements'' supporting the net asset value per share of money market funds, which support fund affiliates provided in several instances in reliance on no-action assurances by our staff. *See supra* note 38. Unlike direct purchases of securities by affiliates, the nature and terms of these agreements are highly customized and terminate after a limited period of time. As a result, these situations do not readily lend themselves to being addressed in a rule of general applicability.

[266] Rule 17a–9(a) and (b). *See* 1996 Adopting Release, *supra* note 20, at nn.190–94 and accompanying text.

[267] *See* 1996 Adopting Release, *supra* note 20, at nn.190–92 and accompanying text.

[268] *See id.*

[269] *See id.* at text following n.194 (''The rule, as adopted, is available for transactions involving securities that are no longer eligible securities because they no longer satisfy either the credit quality or maturity limiting provisions (*e.g.,* the securities are long-term adjustable-rate securities whose market values no longer approximate their par values on the interest rate readjustment dates).'').

[270] *See, e.g.,* Fixed Income Shares—Allianz Dresdner Daily Asset Fund, SEC Staff No-Action Letter (May 5, 2008); First American Funds, Inc.—Prime Obligation Fund, SEC Staff No-Action Letter (Dec. 3, 2007); MainStay VP Series Fund—MainStay VP Cash Management Portfolio, SEC Staff No-Action Letter (Oct. 22, 2008); Institutional Liquidity Trust—Prime Master Series, SEC Staff No-Action Letter (Apr. 30, 2008); Penn Series Funds, Inc.—Money Market Fund, SEC Staff No-Action Letter (Oct. 22, 2008); Phoenix Opportunities Trust—Phoenix Money Market Fund and Phoenix Edge Series Fund—Phoenix Money Market Series, SEC Staff No-Action Letter (Oct. 22, 2008); USAA Mutual Funds Trust—USAA Money Market Fund, SEC Staff No-Action Letter (Oct. 22, 2008). SEC staff no-action letters are available on the SEC Web site at *http://www.sec.gov/divisions/investment/imnoaction.shtml* under the hyperlink for the relevant letter.

[271] *See, e.g.,* Dreyfus Money Funds, SEC Staff No-Action Letter (Oct. 20, 2008); Mount Vernon Securities Lending Trust, Inc.—Mount Vernon Securities Lending Prime Portfolio, SEC Staff No-Action Letter (Oct. 22, 2008); Morgan Stanley Money Market Funds, SEC Staff No-Action Letter (Oct. 22, 2008); Reserve New York Municipal Money-Market Trust—New York Municipal Money-Market Fund, SEC Staff No-Action Letter (Nov. 18, 2008); Russell Investment Company—Russell Money Market Fund, SEC Staff No-Action Letter (Oct. 20, 2008).

[272] Proposed rule 17a–9(a). Other provisions of rule 2a–7 currently except immaterial defaults unrelated to the financial condition of the issuer. *See* rule 2a–7(c)(6)(ii)(A). As we have noted in the past, this exception is intended to exclude defaults that are technical in nature, such as where the obligor has failed to provide a required notice or information on a timely basis. *See* 1991 Adopting Release, *supra* note 20, at Section II.E.2.

[273] Proposed rule 17a–9(a)(1) and (2).

[274] Proposed rule 17a–9(b)(2).

the transaction via electronic mail.[275] We proposed a similar amendment last summer in connection with the NRSRO References Proposal.[276] That proposal is superseded by the requirement we propose here, which contains one change.[277] Due to the nature of the proposed amendments to rule 17a–9, which do not restrict the purchase of a portfolio security from a fund to particular categories, we propose to require not only notice of the fact of the purchase, but also the reasons for the purchase. Such reasons might include, for example, that the fund's adviser expected that the security would be downgraded, that due to the decreased market value of the security the fund was at risk of breaking the buck, or that the fund was experiencing heightened redemption requests and wished to avoid a ''fire sale'' of assets to satisfy such requests.

We continue to believe that the current notice requirement in rule 2a–7, which is triggered when a security over a threshold amount of the fund's assets defaults, provides us with incomplete information about money market fund holdings of distressed securities, particularly those that have engaged in affiliated transactions.[278] We also continue to believe that this proposed notice requirement, which is a concept supported by some commenters last summer,[279] would impose little burden on money market funds or their managers, and would enhance our oversight of money market funds especially during times of economic stress. We request comment on this proposed notice requirement. Is the proposed requirement that the notice include the reasons for the purchase by the affiliate sufficiently clear? Should we require that any additional information be included in the notice and should the notice take a particular form?

[275] Proposed rule 2a–7(c)(7)(iii)(B). The electronic mail notification would be directed to the Director of our Division of Investment Management, or the Director's designee. Proposed rule 2a–7(c)(7)(iii).

[276] *See* NRSRO References Proposal, *supra* note 105, at n.35 and accompanying text.

[277] Proposed rule 2a–7(c)(7)(iii)(B).

[278] *See* NRSRO References Proposal, *supra* note 105, at Section III.A.4.

[279] *See, e.g.,* Comment Letters of the Investment Company Institute (Sept. 5, 2008); Commenter Letter of the Mutual Fund Directors Forum (Sept. 5, 2008); Comment Letter of OppenheimerFunds, Inc. (Sept. 4, 2008); Comment Letter of Charles Schwab Co., Inc. (Sept. 5, 2008). Comment letters may be accessed on the Commission's Web site at *http://www.sec.gov/comments/s7-19-08/s71908.shtml.*

I. Fund Liquidation

1. Proposed Rule 22e–3

The Commission is proposing a new rule 22e–3, which would exempt money market funds from section 22(e) to permit them to suspend redemptions in order to facilitate an orderly liquidation of the fund. The new rule would replace rule 22e–3T, a temporary rule that provides a similar exemption for money market funds participating in the Treasury Department's Guarantee Program.[280]

Section 22(e) of the Act generally prohibits funds, including money market funds, from suspending the right of redemption, and from postponing the payment or satisfaction upon redemption of any redeemable security for more than seven days. The provision was designed to prevent funds and their investment advisers from interfering with the redemption rights of shareholders for improper purposes, such as the preservation of management fees.[281] Although section 22(e) permits funds to postpone the date of payment or satisfaction upon redemption for up to seven days, it does not permit funds to suspend the right of redemption, absent certain specified circumstances or a Commission order.

As discussed above, on September 22, 2008, we issued an order under section 22(e) to permit two series of The Reserve Fund to suspend redemptions and postpone payments in the midst of a run on the fund. In November 2008, we adopted rule 22e–3T to permit money market funds participating in the Treasury's Guarantee Program to suspend redemptions and postpone the payment of redemption proceeds if a fund breaks the buck and begins liquidation proceedings under the Guarantee Program.[282]

The temporary rule was intended to facilitate the orderly disposal of assets in a manner that would protect the interests of all shareholders. Absent the exemption provided by rule 22e–3T, a fund participating in the Guarantee Program that faces a run would be compelled by section 22(e) to continue to redeem shares. In order to raise the money to pay redemption proceeds to shareholders, a fund may have to sell portfolio securities. Massive redemption requests could thus force a fund to liquidate positions in a fire sale, further depressing the fund's market value share price. Earlier redeeming shareholders would receive higher share prices (at or near the amortized cost) but, as a result of the fund's diminishing asset base, later redeeming shareholders may receive lower prices.[283] Moreover, as demonstrated by the events of last fall, a run on a single fund can quickly spread to other funds and, as multiple funds attempt to meet redemption requests, seriously deplete the value of portfolio holdings and drain the availability of cash and more liquid securities.

We believe that rule 22e–3T, which will expire on October 18, 2009 in conjunction with the Guarantee Program, should be replaced with a rule that would provide for a similar exemption independent of the Guarantee Program.[284] Proposed rule 22e–3 would permit all money market funds to suspend redemptions upon breaking a buck, if the board, including a majority of independent directors, approves liquidation of the fund, in order to liquidate in an orderly manner. The proposed rule is intended to reduce the vulnerability of investors to the harmful effects of a run on a fund, and minimize the potential for disruption to the securities markets.

Proposed rule 22e–3(a) would permit a money market fund to suspend redemptions if: (i) The fund's current price per share, calculated pursuant to rule 2a–7(c), is less than the fund's stable net asset value per share; (ii) its board of directors, including a majority of directors who are not interested

[280] The Treasury's Guarantee Program guarantees that shareholders of a participating money market fund will receive the fund's stable share price for each share owned as of September 19, 2008, if the fund liquidates under the terms of the Program. *See supra* note 55 and accompanying text.

[281] *See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency,* 76th Cong., 3d Sess. 291 (1940) (statement of David Schenker, Chief Counsel, Investment Trust Study, SEC).

[282] *See* Rule 22e–3T Adopting Release, *supra* note 31.

[283] *Id.*

[284] One commenter on rule 22e–3T recommended that we make the rule a permanent rule for any fund preparing to liquidate, independent of the Guarantee Program. *See* Comment Letter of the Investment Company Institute (Dec. 24, 2008). Two other comment letters related to matters unique to the Guarantee Program. *See* Comment Letter of the Coalition of Mutual Fund Investors (Dec. 14, 2008) (recommending that any fund that liquidates and relies on the Guarantee Program be required to provide information obtained pursuant to rule 22c–2 under the Investment Company Act); Comment Letter of Michael F. Johnson (Nov. 20, 2008) (requesting information concerning the applicability of the Guarantee Program to a particular fund). The only other comment letter that the Commission received concerning interim final rule 22e–3T was a letter from the Committee of Annuity Insurers, discussed below. *See infra* note 288 and accompanying text. Comments on interim final rule 22e–3T, File No. S7–32–08, are available at *http://www.sec.gov/comments/s7-32-08/s73208.shtml.* Once rule 22e–3T expires, the Commission would stand ready to consider applications for exemptive relief under section 22(e).

persons, approves the liquidation of the fund; and (iii) the fund, prior to suspending redemptions, notifies the Commission of its decision to liquidate and suspend redemptions, by electronic mail directed to the attention of our Director of the Division of Investment Management or the Director's designee.[285] These proposed conditions are intended to ensure that any suspension of redemptions will be consistent with the underlying policies of section 22(e). We understand that suspending redemptions may impose hardships on investors who rely on their ability to redeem shares. Accordingly, our proposal is limited to permitting suspension of this statutory protection only in extraordinary circumstances. Thus, the proposed conditions, which are similar to those of the temporary rule, are designed to limit the availability of the rule to circumstances that present a significant risk of a run on the fund. Moreover, the exemption would require action of the fund board (including the independent directors), which would be acting in its capacity as a fiduciary.[286]

The proposed rule contains an additional provision that would permit us to take steps to protect investors. Specifically, the proposed rule would permit us to rescind or modify the relief provided by the rule (and thus require the fund to resume honoring redemptions) if, for example, a liquidating fund has not devised, or is not properly executing, a plan of liquidation that protects fund shareholders.[287] Under this provision, the Commission may modify the relief ''after appropriate notice and opportunity for hearing,'' in accordance with section 40 of the Act.

Paragraph (b) of the proposed rule would provide a limited exemption from section 22(e) for certain conduit funds that invest, pursuant to section 12(d)(1)(E) of the Act, all of their assets in a money market fund that suspends redemption in reliance on paragraph (a) of the proposed rule.[288] Without this exemption, these conduit funds may be placed in the position of having to honor redemption requests while being unable to liquidate shares of money market funds held as portfolio securities. We anticipate that this provision would be used principally by insurance company separate accounts issuing variable insurance contracts and by funds participating in master-feeder arrangements.[289]

We request comment generally on all aspects of proposed rule 22e–3. Is it appropriate to permit money market funds that break the buck to suspend redemptions during liquidation? Should the exemption be available to other types of open-end investment companies? Should there be additional or alternative conditions with regard to the exemption (*e.g.,* should the fund be required to disclose its liquidation plan to shareholders)? Should there be a limit on the suspension period so that shareholder assets are not ''locked up'' for an unduly lengthy period? If so, what should be the maximum length of the suspension period (*e.g.,* 60 or 90 days)?

2. Request for Comment on Other Regulatory Changes

We also request comment on certain additional changes that we are considering but are not currently proposing, relating to the suspension of redemptions that may provide additional protections to money market fund investors.

a. Temporary Suspensions for Exigent Circumstances

Should we include a provision in rule 22e–3 that would permit fund directors to temporarily suspend redemptions during certain exigent circumstances other than liquidation of the fund? The ICI Report recommends that we permit a fund's directors to suspend temporarily the right of redemption if the board, including a majority of its independent directors, determines that the fund's net asset value is ''materially impaired.'' [290] Under this approach, the fund could suspend redemptions for up to five days, during which time the fund could attempt to restore its net asset value (*e.g.,* by securing credit support agreements). In the event that the fund could not restore its net asset value within that period, the fund would be required to begin the liquidation process. A fund would be permitted to exercise this option only once every five years. This ''time out'' could give money market funds some time during turbulent periods to assess the viability of the fund.[291]

We request comment generally on whether we should provide this additional relief. Would it make money market funds less appealing to investors? Would it provide time for directors to find a solution? Or might it accelerate redemptions from shareholders once the suspension period ends, regardless of any action taken by the board of directors? [292] Could the accumulating redemptions ''hanging over the fund'' place pressure on the prices of fund portfolio securities? How could we ensure that directors would use this authority only in exigent circumstances? When is a money market fund's net asset value ''materially impaired''? Would this term include circumstances in which the fund has overvalued securities, which, if sold to satisfy redemptions, would have to be marked down?

We also request comment on how a temporary suspension should operate. What disclosures should a money market fund be required to make, and when and where should the fund make them? Should a fund be required to calculate its net asset value during the suspension period, and, if so, should the net asset value be publicly disclosed? Should the suspension period be longer or shorter than five days? What factors should the board of directors take into consideration when deciding whether to suspend redemptions temporarily? How would directors weigh the various and possibly competing interests of shareholders?

b. Options for Shareholders in Liquidating Funds

If a fund suspends redemptions in order to liquidate, the directors would likely distribute money to investors as it becomes available from the sale of portfolio securities, while maintaining a reserve to cover expenses and potential liabilities. As we have seen, this process

[285] Proposed rule 22e–3(a).

[286] We also note that the potential for abuse may be mitigated because the impending liquidation of the fund would ultimately eliminate a source of advisory fees for the adviser. *See* Rule 22e–3T Adopting Release, *supra* note 31, at text accompanying nn.19–20.

[287] Proposed rule 22e–3(c). We adopted a similar provision in rule 22e–3T. Rule 22e–3T(b); *see also* Rule 22e–3T Adopting Release, *supra* note 31.

[288] Proposed rule 22e–3(b). This provision is based on a suggestion we received in a comment letter submitted in connection with rule 22e–3T. *See* Comment Letter of the Committee of Annuity Insurers (Dec. 23, 2008) (requesting that the Commission extend the application of rule 22e–3T to insurance company separate accounts). Proposed rule 22e–3(b) also would require a fund to promptly notify the Commission that it has suspended redemptions in reliance on the rule.

[289] For a discussion of master-feeder arrangements, *see supra* note 194.

[290] ICI Report, *supra* note 6, at 85–89.

[291] Similarly, the Treasury's Guarantee Program and rule 22e–3T effectively provide funds with the ability to temporarily suspend redemptions. The Guarantee Program requires funds that break the buck to commence liquidation proceedings within five days, unless the fund restores its net asset value to a level equal to or above $0.995 within that period. Meanwhile, rule 22e–3T permits funds to suspend redemptions if a fund breaks the buck and has not yet ''cured'' the event.

[292] In other situations, temporary restrictions on redemptions may have exacerbated the situation and increased the rate of redemptions. *See* Svea Herbst-Bayliss, *''Gates'' May Have Hurt More Than Helped Hedge Funds,* Reuters, Mar. 26, 2009, available at *http://www.reuters.com/article/PrivateEquityandHedgeFunds09/idUSTRE52P4JJ20090326.*

can be lengthy. Should we include conditions in any rule regarding the treatment of shareholders in a liquidation? [293] For example, should we require that fund assets be distributed on a pro rata basis? Should there be a limit on allowable reserves?

Alternatively, should we permit or require a fund board to recognize that investors will have different preferences for liquidity and capital preservation? For example, a fund that decides to liquidate and suspend redemptions could be allowed to offer shareholders the choice of redeeming their shares immediately at a reduced net asset value per share that reflects the fair market value of fund assets, *i.e.,* at a price below the fund's stable net asset value. Remaining shareholders would receive their redemption proceeds at the end of the liquidation process and may receive the economic benefit of an orderly disposal of assets. Would such an approach be fair to all fund shareholders? What conditions would be necessary and appropriate to ensure that shareholders are treated fairly? Specifically, how would such a mechanism operate? Should funds be able to deduct an additional discount or ''haircut'' from earlier redeeming shareholders to provide additional protection for later redeeming shareholders? Should we permit boards to decide the amount of the haircut? If so, what factors should boards use to decide such haircuts? What disclosures and information would be necessary to permit shareholders to make an informed decision between the options?

Should investors be required to choose their preferences at the time they purchase fund shares? Should investors be able to change their preferences? If so, how and when? Should they be able to choose their preferences when a fund announces its intention to liquidate and suspend redemptions under the rule? If so, should we (or the fund board) establish a default assumption for investors that fail to respond to the inquiry?

III. Request for Comment

The Commission requests comment on the rules and amendments proposed in this release. Commenters are requested to provide empirical data to support their views. The Commission also requests suggestions for additional changes to existing rules or forms, and comments on other matters that might have an effect on the proposals contained in this release.

We recognize that the events of the last two years raise the question of whether further and perhaps more fundamental changes to the regulatory structure governing money market funds may be warranted. Therefore we are exploring other ways in which we could improve the ability of money market funds to weather liquidity crises and other shocks to the short-term financial markets. We invite interested persons to submit comments on the advisability of pursuing any or all of the following possible reforms, as well as to provide other approaches that we might consider to achieve our goals. We expect to benefit from the comments we receive before deciding whether to propose these changes.[294]

A. Floating Net Asset Value

When the Commission adopted rule 2a–7 in 1983,[295] it facilitated money market funds' maintenance of a stable net asset value by permitting them to use the amortized cost method of valuing their portfolio securities. As discussed above, section 2(a)(41) of the Act, in conjunction with rules 2a–4 and 22c–1, normally require a registered investment company to calculate its current net asset value per share by valuing its portfolio securities for which market quotations are readily available at current market value and its other securities at their fair value as determined, in good faith, by the board of directors. Therefore, using the amortized cost method of valuation is an exception to the general requirement under the Act that investors in investment companies should pay and receive market value or fair value for their shares.[296] The Commission did not take lightly its decision to permit money market funds to use the amortized cost method of valuation. Rule 2a–7 essentially codified several of the Commission's exemptive orders relating to money market funds, and these orders were issued only after an administrative hearing in the late 1970s at which the use of the amortized cost method of valuation was a matter of considerable debate.[297]

The balance the Commission struck was that, in exchange for permitting this valuation method, it would impose certain conditions on money-market funds designed to ensure that these funds invested only in instruments that would tend to promote a stable net asset value per share and would impose on the funds' boards of directors an ongoing obligation to determine that it remains in the best interest of the funds and their shareholders to maintain a stable net asset value. Further, money market funds are permitted to use the amortized cost method of valuation only so long as their boards believe that it fairly reflects the funds' market-based net asset value per share.[298]

The $1.00 stable net asset value per share has been one of the trademark features of money market funds. It facilitates the funds' role as a cash management vehicle, provides tax and administrative convenience to both money market funds and their shareholders,[299] and promotes money market funds' role as a low-risk investment option. Many investors may hold shares in money market funds in large part because of these features.[300] We are mindful that if we were to require a floating net asset value, a substantial number of investors might

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[293] The Investment Company Act does not contain any provisions governing the liquidation of an investment company, including a money market fund; rather, liquidations are primarily effected in accordance with applicable state law. The Act does include, however, a provision authorizing Federal district courts to enjoin a plan of reorganization upon a proceeding initiated by the Commission on behalf of security holders, if the court determines that the plan of reorganization is not ''fair and equitable to all security holders.'' Section 25(c) of the Act. A plan of ''reorganization'' includes a voluntary dissolution or liquidation of a fund. Section 2(a)(33) of the Act.

[294] In addition, we note that the U.S. Department of the Treasury's white paper on Financial Regulatory Reform calls for the President's Working Group on Financial Markets to prepare a report by September 15, 2009 assessing whether more fundamental changes are necessary to further reduce the money market fund industry's susceptibility to runs, such as eliminating the ability of a money market fund to use a stable net asset value or requiring money market funds to obtain access to reliable emergency liquidity facilities from private sources. *See* Department of the Treasury, Financial Regulatory Reform, A New Foundation: Rebuilding Financial Supervision and Regulation, at 38–39 (June 2009).

[295] *See* 1983 Adopting Release, *supra* note 3.

[296] Rule 2a–7 is not the only exception permitting open-end investment companies to value short-term debt securities in their portfolios on an amortized cost basis. Subject to certain conditions, the amortized cost method of valuation may be used by open-end investment companies to value investments with a remaining maturity of 60 days or less in accordance with the Commission's interpretation set forth in Valuation of Debt Instruments by Money Market Funds and Certain Other Open-End Investment Companies, Investment Company Act Release No. 9786 (May 31, 1977) [42 FR 28999 (June 7, 1977)].

[297] *See* 1982 Proposing Release, *supra* note 25, at text preceding, accompanying, and following nn.2–4.

[298] *See* rule 2a–7(c)(1).

[299] A $1.00 stable net asset value per share relieves shareholders of the administrative task of tracking the timing and price of purchase and sale transactions for capital gain and wash sale purposes under tax laws.

[300] Some institutional investors are prohibited by board-approved guidelines or firm policies from investing certain assets in money market funds unless they have a stable net asset value per share. *See* ICI Report, *supra* note 6, at 109. One survey also reported that 55% of institutional cash managers would substantially decrease their investments in money market funds if the funds had a floating value. *See id.* at 110 (citing a January 2009 survey by Treasury Strategies, Inc.).

move their investments from money market funds to other investment vehicles.

However, a stable $1.00 net asset value per share also creates certain risks for a money market fund and its investors. These risks are a consequence of the amortized cost method of valuation and the resulting insensitivity of the $1.00 net asset value per share to market valuation changes. It may create an incentive for investors to redeem their shares when a fund's market-based net asset value per share falls between $0.995 and $1.00 because they will obtain $1.00 in exchange for their right to fund assets worth less than $1.00 per share. Regardless of the motivation underlying the redemptions, the unrealized losses attributable to redeeming shareholders are now borne by the remaining money market fund shareholders.

Further, particularly in times of market turbulence and illiquidity, regardless of the motivation behind the redemptions, redemptions at $1.00 in a money market fund whose market-based net asset value is below $1.00 can further depress the fund's market-based net asset value, exacerbating the impact on remaining shareholders. It can create a level of unfairness in permitting the remaining fund shareholders to pay for the liquidity needs and unrealized losses of redeeming fund shareholders. Because there is a limited window where only so many shareholders can redeem at $1.00 in a fund with a portfolio under threat (because of holding distressed securities or facing significant shareholder redemptions) before the board of the fund must consider whether to re-price the fund's shares or take other action, there can be an incentive to be the first shareholder to place a redemption request upon any hint of stress at a money market fund. Generalized market dislocations or illiquidity can create this stress on a number of money market funds simultaneously, leading to runs on money market funds similar to those we witnessed in September 2008. Even further, a run may result in fire sales of securities, placing pressure on market prices and transmitting problems that may be originally associated with a single money market fund to other money market funds. Finally, larger, institutional money market fund investors, especially those with fiduciary responsibilities for managing their clients' assets, are more likely to recognize negative events potentially affecting the money market fund and to be in a position to quickly redeem shares of the money market fund and thus protect their money market investments and those of their clients, leaving other smaller, more passive money market investors to bear their losses.

When we determined to permit money market funds to use amortized cost valuation in 1983, money market funds held only about $180 billion in assets [301] and played a minor role in the short-term credit markets. Their principal benefit was to provide retail investors with a cash investment alternative to bank deposits, which at the time paid fixed rates substantially below short-term money market rates. Since that time, money market funds have grown tremendously and have developed into an industry driven in large part by institutional investors, who hold approximately 67 percent of the over $3.7 trillion in money market fund assets.[302] As noted earlier, with the ability of institutional investors today to make hourly redemption requests to money market funds, these investors have the ability to move substantial amounts of money in and out of money market funds (or between money market funds), with potentially detrimental effects on the funds, their remaining shareholders, and the marketplace.

The influx of institutional investments in money market funds, the increased transparency of fund holdings, and the speed with which large shareholders can buy and redeem shares may have increased the possibility that the value of some fund investors' shares will be diluted as a result of the fund's use of the amortized cost valuation method.[303] When short-term interest rates decrease, the fund's portfolio holdings (with their now above-market yields) become more valuable. Institutional investors may pay $1.00 per share to purchase fund shares whose market value is, for example, $1.002 per share. Such institutional inflows would be invested by the fund in securities offering the new, reduced market yields, diluting the yield advantage that existing fund shareholders would otherwise enjoy. These institutional investors, in effect, are able to earn a yield through a money market fund above the market rate they could earn on a direct investment. They achieve this yield advantage by capturing a portion of the benefit from declining interest rates that otherwise would benefit existing money market fund investors.[304] Similarly, when interest rates increase, institutional investors could sell shares of money market funds, obtaining $1.00 per share for a fund that all things being equal likely will be worth less, *e.g.,* $0.997 per share.[305] If instead the institutional investor sells commercial paper in the market under the same conditions, it could only sell such securities at a discount.

In stable markets and with small shareholdings, amortized cost pricing at most results in shareholders who purchase or redeem shares receiving slightly more or less (in shares or in redemption proceeds) than they otherwise would if the fund's net asset value were to fluctuate according to market-based pricing. Net redemptions generally are funded by cash on hand. Any deviation between the market-based net asset value per share of the fund and its amortized cost value is small enough to have an immaterial effect on the fund, and no effect on investors. It could be compared to a rounding convention in a billing system.

In a market under significant stress and with institutions holding billions of dollars of money market fund shares, however, a real arbitrage opportunity can arise, and a race or threat of a potential race for redemptions may become a real possibility. For example, during last fall's market turbulence, as credit spreads on many money market fund portfolio securities widened and the market value of these securities fell, we understand that the market-based net asset value of some money market funds dropped low enough that redemptions by a few large shareholders in the fund at $1.00 per share alone could have caused the fund to break the buck.

We recognize that a floating net asset value would not necessarily eliminate the incentive to redeem shares during a liquidity crisis—shareholders still

[301] *See* ICI Report, *supra* note 6, at 1.

[302] *See* ICI Mutual Fund Historical Data, *supra* note 47 (data for week ended June 10, 2009).

[303] We have considered the impact of dilution in money market funds using the amortized cost method of valuation in the past. *See, e.g.,* 1982 Proposing Release, *supra* note 25, at n.6 and accompanying text.

[304] This benefit would otherwise be paid out to money market fund shareholders in the form of greater dividend payments from the increased yield.

[305] *See* S&P 2007 Ratings Criteria, *supra* note 139, at 27. Standard and Poor's gives the example of an investor holding $1 million in 90-day U.S. Treasury bills yielding 5%. If interest rates increased 150 basis points, the value of the investment would drop by approximately $3700 and the investor's yield would remain at 5%. Compare this to an investor holding one million shares of a money market fund holding exclusively Treasury bills yielding 5% (setting aside fund expenses). If interest rates rose 150 basis points, the investor could sell the fund investment for $1.00 per share and not experience any loss. The investor could then purchase 90-day Treasury bills yielding 6.5%, instantaneously increasing its return by 1.5%. If the fund is forced to sell these securities to meet redemption requests, the $3700 unrealized loss would be borne by the fund and its remaining shareholders.

would have an incentive to redeem before the portfolio quality deteriorated further from the fund selling securities into an illiquid market to meet redemption demands. But a floating net asset value may lessen the impact of any portfolio deterioration by eliminating the ability of shareholders to redeem their shares for more than the current market value per share of the fund's portfolio. It also might better align investors' expectations of risk with the actual risks posed by money market fund investments. We expect that, at least under stable market conditions, the other risk-limiting conditions of rule 2a–7 would tend to promote a relatively stable net asset value per share even if we eliminated the ability of money market funds to rely on the amortized cost method of valuation.

We request comment on the possibility of eliminating the ability of money market funds to use the amortized cost method of valuation. Would such a change render money market funds a more stable investment vehicle? Would it lessen systemic risk by making money market funds less susceptible to runs? Would it make the risks inherent in money market funds more transparent? Many money market funds' stable net asset value was supported voluntarily by fund affiliates over the last two years, and shareholders may not have understood that this support was provided on a voluntary basis and may not be provided in the future.

On the other hand, would such a change make money market funds more susceptible to runs because investors might respond quickly to small changes in net asset value? As discussed above, a stable net asset value per share creates certain administrative, tax, and cash management conveniences for fund investors. Accordingly, would prohibiting the use of the amortized cost method of valuation in money market funds encourage investors to shift assets from money market funds to unregulated offshore funds, bank accounts, or other investments? Would it result in some institutional money market funds deregistering with the Commission (in reliance on section 3(c)(7) of the Act) in order to continue to maintain a stable net asset value? Is this a result with which the Commission should be concerned?

What impact would this have on investors' cash management activities? What impact might such a change have on the short-term credit markets and issuers of short-term debt securities? How would money market funds whose share prices were based on market-based net asset values differ from current short-term bond funds? Should any rule amendment eliminating the ability of money market funds to rely on the amortized cost method of valuation to create a stable net asset value be limited to institutional money market funds? As discussed above, institutional money market funds are at greater risk of instability, runs and the dilutive effect of large redemptions.

B. In-Kind Redemptions

As noted above, one of our concerns relates to the ability of large institutional shareholders to rapidly redeem substantial amounts of fund assets, which can pose a threat to the stable net asset value of the fund and can advantage one group of shareholders over another by requiring remaining shareholders to pay for the liquidity needs of large redeeming shareholders.[306] While the liquidity requirements we are proposing today may ameliorate pressures created by redeeming shareholders, during severe market dislocations even more steps may be necessary to help ensure the stability of a stable net asset value money market fund. Accordingly, if we retain a stable net asset value for money market funds, we are interested in exploring other methods of reducing the risks and unfairness posed by significant sudden redemptions.

One possible way of addressing these issues would be to require that funds satisfy redemption requests in excess of a certain size through in-kind redemptions.[307] Money market funds currently are permitted to and many money market funds disclose in their prospectuses that they may satisfy redemption requests through in-kind redemptions.[308] In the wake of last fall's redemption pressures on money market funds, however, only one announced that it would do so.[309] In-kind redemptions would lessen the impact of large redemptions on remaining money market fund shareholders and would require the redeeming investor to bear part of the cost of its liquidity needs. If shareholders did not immediately sell these securities, requiring in-kind redemptions in such circumstances may mitigate the impact of large redemptions on short-term credit markets by reducing the likelihood of large fire sales of short-term securities into the market. Finally, it also may encourage large investors to diversify their money market fund holdings among a variety of funds, perhaps lessening the risk that any individual fund would be threatened by a few redemptions.[310] If proposed, we would expect to set a threshold for requiring in-kind redemptions sufficiently high that we could reasonably assume that such an investor would be in the position to assume ownership of such securities.

We request comment on requiring money market funds to satisfy redemption requests in excess of a certain size through in-kind redemptions. What would be the advantages and disadvantages of this approach? What type of threshold redemption request should trigger this requirement? Should there be a different threshold for third-party shareholders versus affiliated shareholders of a money market fund? Should there be other restrictions on affiliate redemptions (*e.g.,* prioritizing non-affiliate redemptions over affiliate redemption requests that are submitted on the same day)? How should the fund determine the value of the securities to be distributed as a result of such a redemption request? The securities' amortized cost value? The securities' fair value, as determined based on current market quotations or, if no such quotations are readily available, as determined in good faith by the fund's board of directors? Would these shareholders be able to assume ownership of such securities?

We note that a board of directors alternatively could cause a money market fund to impose a redemption fee under rule 22c–2 to impose some of the fund's costs from shareholders' liquidity

[306] This situation to some extent could be analogized to the situation that can be created by market timing in which selling shareholders receive benefits to the detriment of remaining mutual fund shareholders.

[307] An in-kind redemption occurs when a shareholder's redemption request to a fund is satisfied by distributing to that shareholder portfolio assets of that fund instead of cash.

[308] *See* section 2(a)(32) of the Act (defining a redeemable security as a security where the holder ''is entitled * * * to receive approximately his proportionate share of *the issuer's current net assets,* or the cash equivalent thereof'' (italics added)). *See also* rule 18f–1, which provides an exemption from certain prohibitions of section 18(f)(1) of the Act with regard to redemptions in kind and in cash.

[309] On September 19, 2008, the American Beacon Money Market Portfolio announced it would honor redemption requests exceeding $250,000 in a 90-day period through pro rata payments of cash and ''in-kind'' distributions of securities held by the fund, to prevent redemptions from ''forcing'' the sale of fund assets. *See* American Beacon Funds, Prospectus Supplement for BBH ComSet Class, Institutional Class, Cash Management Class, and PlanAhead Class (Sept. 30, 2008), *available at http://www.sec.gov/Archives/edgar/data/809593/000080959308000045/sep3008_prosuppbeacon.txt.*

[310] Large investors that did not wish to receive in-kind redemptions could avoid this risk by spreading their investments among several money market funds such that no single money market fund investment was large enough to possibly trigger the in-kind redemption requirement.

needs on the redeeming shareholders.[311] What would be the advantages and disadvantages of this alternative approach to addressing our concerns regarding significant shareholder redemptions?

IV. Paperwork Reduction Act Analysis

Certain provisions of the proposed amendments to rules 2a–7 and 30b1–5 and proposed new rules 22e–3 and 30b1–6 and Form N–MFP under the Investment Company Act contain ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[312] The titles for the existing collections of information are: (1) ''Rule 2a–7 under the Investment Company Act of 1940, Money market funds'' (OMB Control No. 3235–0268); (2) ''Rule 30b1–5 under the Investment Company Act of 1940, Quarterly filing of schedule of portfolio holdings of registered management investment companies'' (OMB Control No. 3235–0577); and (3) ''Form N–Q under the Investment Company Act of 1940, Quarterly Schedule of Portfolio Holdings of Registered Management Investment Company'' (OMB Control No. 3235–0578). The titles for the new collections of information are: (1) ''Rule 22e–3 under the Investment Company Act of 1940, Exemption for liquidation of money market funds;'' (2) ''Rule 30b1–6 under the Investment Company Act of 1940, Monthly report for money market funds;'' and (3) ''Form N–MFP under the Investment Company Act of 1940, Portfolio Holdings of Money Market Funds.'' The Commission is submitting these collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. Our proposed amendments and new rules are designed to make money market funds more resilient to risks in the short-term debt markets, and to provide greater protections for investors in a money market fund that is unable to maintain a stable net asset value per share. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

A. Rule 2a–7

Rule 2a–7 under the Investment Company Act exempts money market funds from the Act's valuation requirements, permitting money market funds to maintain stable share pricing, subject to certain risk-limiting conditions. As discussed above, we are proposing to amend rule 2a–7 in several respects. Our proposal would amend the rule by: Revising portfolio quality and maturity requirements; introducing liquidity requirements; requiring money market fund boards to adopt procedures providing for periodic stress testing of the fund's portfolio; requiring funds to disclose monthly on their websites information on portfolio securities; and finally, requiring money market fund boards to determine, at least once each calendar year, that the fund has the capability to redeem and issue its securities at prices other than the fund's stable net asset value per share.[313] Three of the proposed amendments would create new collection of information requirements. The respondents to these collections of information would be money market funds or their advisers, as noted below.

1. Stress Testing

The proposed amendments would require money market fund boards to adopt written procedures that provide for the periodic testing of the fund's ability to maintain a stable net asset value per share based on certain hypothetical events.[314] These procedures also would have to provide for a report of the testing results to be submitted to the board of directors at its next regularly scheduled meeting, and an assessment by the fund's adviser of the fund's ability to withstand the events (and concurrent occurrences of those events) that are reasonably likely to occur within the following year.[315] Compliance with this proposed disclosure requirement would be mandatory for any fund that holds itself out as a money market fund in reliance on rule 2a–7. The information when provided to the Commission in connection with staff examinations or investigations would be kept confidential to the extent permitted by law.

We anticipate that stress testing would give fund advisers a better understanding of the effect of potential market events and shareholder redemptions on their funds' ability to maintain a stable net asset value, the fund's exposure to that risk, and actions the adviser may need to take to mitigate the possibility of the fund breaking the buck.

Commission staff believes that in light of the events of last fall most, if not all, money market funds currently conduct some stress testing of their portfolios as a matter of routine fund management and business practice.[316] These procedures likely vary depending on the fund's investments. For example, a prime money market fund that is offered to institutional investors may test for hypothetical events such as potential downgrades or defaults in portfolio securities while a U.S. Treasury money market fund may not. Some funds that currently conduct testing may be required to include additional hypothetical events under our proposed amendments. These funds likely provide regular reports of the test results to senior management. We expect, however, that most funds do not have written procedures documenting the stress testing, do not report the results of testing to their boards of directors, and do not provide an assessment from the fund's adviser regarding the fund's ability to withstand the hypothetical events reasonably likely to occur in the next year.

Commission staff believes that the stress testing procedures are or would be developed for all the money market funds in a fund complex by the fund adviser, and would address appropriate variations for individual money market funds within the complex. Staff estimates that it would take a fund adviser an average of 21 hours for a portfolio risk analyst initially to draft procedures documenting the complex's stress testing, and 3 hours for the board of directors to consider and adopt the written procedures. We estimate that 171 fund complexes with money market funds are subject to rule 2a–7. We therefore estimate that the total burden to draft these procedures initially would

[311] The redemption fee cannot exceed two percent of the value of the shares redeemed.

[312] 44 U.S.C. 3501–3521.

[313] *See supra* Section II.A–G.

[314] Proposed rule 2a–7(c)(8)(ii)(D). These events would include, but would not be limited to, a change in short-term interest rates, an increase in shareholder redemptions, a downgrade of or default on portfolio securities, and the widening or narrowing of spreads between yields on an appropriate benchmark the fund has selected for overnight interest rates and commercial paper and other types of securities held by the fund.

[315] Proposed rule 2a–7(c)(8)(ii)(D)(2), (3). The report to the board would include the dates on which the testing was performed and the magnitude of each hypothetical event that would cause the deviation of the money market fund's net asset value calculated using available market quotations (or appropriate substitutes that reflect current market conditions) from its net asset value per share calculated using amortized cost to exceed ½ of 1 percent.

[316] The estimates of hour burdens and costs provided in the PRA and cost benefit analyses are based on staff discussions with representatives of money market funds and on the experience of Commission staff. We expect that the board of directors would be the same for all the money market funds in a complex, and thus could adopt the stress test procedures for all money market funds in the complex at the same meeting.

be 4104 hours.[317] Amortized over a three-year period, this would result in an average annual burden of 8 hours for an individual fund complex and a total of 1368 hours for all fund complexes.[318] Staff estimates that a risk analyst also may spend an average of 6 hours per year revising the written procedures to reflect changes in the type or nature of hypothetical events appropriate to stress tests and the board would spend 1 hour to consider and adopt the revisions, for a total annual burden of 1197 hours.[319] Commission staff estimates further that it would take an average of 10 hours of portfolio management time to draft each report to the board of directors, 2 hours of an administrative assistant's time to compile and copy the report and 15 hours of the fund adviser's time to provide an assessment of the funds' ability to withstand reasonably likely hypothetical events in the coming year. The report must be provided at the next scheduled board meeting, and we estimate that the report would cover all money market funds in a complex. We also believe that the fund adviser would provide an assessment each time it provided a report. Finally, we assume that funds would conduct stress tests no less than monthly. With an average of 6 board meetings each year, we estimate that the annual burden would be 162 hours for an individual fund complex with a total annual burden for all fund complexes of 27,702 hours.[320]

The proposed amendment would require the fund to retain records of the reports on stress tests and the assessments for at least 6 years (the first two in an easily accessible place).[321] The retention of these records would be necessary to allow the staff during examinations of funds to determine whether a fund is in compliance with the stress test requirements. We estimate that the burden would be 10 minutes per fund complex per meeting to retain these records for a total annual burden of 171 hours for all fund complexes.[322]

Thus, we estimate that for the three years following adoption, the average annual burden resulting from the stress testing requirements would be 178 hours for each fund complex with a total of 30,438 hours for all fund complexes.[323]

We request comment on these estimates of hourly burdens. Would funds develop stress tests on a complex-wide basis for money market funds? Would the adviser prepare one report regarding stress tests for all the money market funds in a complex, or prepare a separate report for each money market fund?

2. Public Web site Posting

The proposed amendments would require money market funds to post monthly portfolio information on their Web sites.[324] We believe that greater transparency of fund portfolios may allow investors to exert influence on risk-taking by fund advisers, and thus reduce the likelihood that a fund will break the buck. Information will be posted on a public Web site, and compliance with this requirement would be mandatory for any fund that holds itself out as a money market fund in reliance on rule 2a–7. We estimate that there are approximately 750 money market funds that would be affected by this proposal. We understand, based on interviews with industry representatives, that most money market funds already post portfolio information on their webpages at least quarterly.[325] To be conservative, the staff estimates that 20 percent of money market funds, or 150 funds, do not currently post this information at least quarterly, and therefore would need to develop a webpage to comply with the proposed rule. We estimate that a money market fund would spend approximately 24 hours of internal money market fund staff time initially to develop the webpage. We further estimate that a money market fund would spend approximately 4 hours of professional time to maintain and update the relevant webpage with the required information on a monthly basis. Based on an estimate of 750 money market funds posting their portfolio holdings on their webpages, including 150 funds incurring start-up costs to develop a webpage, we estimate that, in the aggregate, the proposed amendment would result in a total of 37,200 average burden hours for all money market funds for each of the first three years.[326]

3. Reporting of Rule 17a–9 Transactions

We are proposing to amend rule 2a–7 to require a money market fund to promptly notify the Commission by electronic mail of the purchase of a money market fund's portfolio security by an affiliated person in reliance on the rule and to explain the reasons for such purchase.[327] The proposed reporting requirement is designed to assist Commission staff in monitoring money market funds' affiliated transactions that otherwise would be prohibited. The new collection of information would be mandatory for money market funds that rely on rule 2a–7 and that rely on rule 17a–9 for an affiliated person to purchase a money market fund's portfolio security. Information submitted to the Commission related to a rule 17a–9 transaction would not be kept confidential.[328]

We estimate that fund complexes will provide one notice for all money market funds in a particular fund complex holding a distressed security purchased in a transaction under rule 17a–9. As noted above, Commission staff estimates that there are 171 fund complexes with money market funds subject to rule 2a–7. Of these fund complexes, Commission staff estimates that an average of 25 per year would be required to provide notice to the Commission of a rule 17a–9 transaction, with the total annual response per fund

[317] This estimate is based on the following calculation: (21 hours + 3 hours) × 171 fund complexes = 4104 hours.

[318] These estimates are based on the following calculations: (21 + 3) ÷ 3 = 8 hours; 8 × 171 fund complexes = 1368 hours. PRA submissions for approval are made every three years. To estimate an annual burden for a collection of information that occurs one time, the total burden is amortized over the three year period.

[319] This estimate is based on the following calculation: (6 hours (analyst) + 1 hour (board)) × 171 fund complexes = 1197 hours.

[320] These estimates are based on the following calculations: (10 hours + 2 hours + 15 hours) × 6 meetings = 162 hours; 162 hours × 171 fund complexes = 27,702 hours.

[321] Proposed rule 2a–7(c)(11)(vii).

[322] This estimate is based on the following calculation: 0.1667 hours × 6 meetings × 171 fund complexes = 171 hours.

[323] These estimates are based on the following calculations: 8 hours (draft procedures) + 7 hours (revise procedures) + 72 hours (6 reports) + 90 hours (assessments) + 1 hour (record retention) = 178 hours; 1368 hours (draft procedures) + 1197 hours (revise procedures) + 12,312 hours (6 reports) + 15,390 (6 assessments) + 171 hours (record retention) = 30,438 hours.

[324] Proposed rule 2a–7(c)(12).

[325] Certain of the required information is currently maintained by money market funds for regulatory reasons, such as in connection with accounting, tax and disclosure requirements. We understand that the remaining information is retained by funds in the ordinary course of business. Accordingly, for the purposes of our analysis, we do not ascribe any time to producing the required information.

[326] The estimate is based on the following calculations. The staff estimates that 150 funds would require a total of 3600 hours initially to develop a webpage (150 funds × 24 hours per fund = 3600 hours). In addition, each of the 750 funds would require 48 hours per year to update and maintain the webpage, for a total of 36,000 hours per year (4 hours per month × 12 months = 48 hours per year; 48 hours per year × 750 funds = 36,000). The average annual hour burden for each of the first three years would thus equal 37,200 hours ([3600 + (36,000 × 3)] ÷ 3).

[327] *See* proposed rule 2a–7(c)(7)(iii).

[328] Commission rules provide, however, for a procedure under which persons submitting notices under the proposed amendment would be able to request that the information not be disclosed under a Freedom of Information Act request. *See* 17 CFR 200.83.

complex, on average, requiring 1 hour of an in-house attorney's time. Given these estimates, the total annual burden of this proposed amendment to rule 2a–7 for all money market funds would be approximately 25 hours.[329]

4. Total Burden

The currently approved burden for rule 2a–7 is 1,348,000 hours. In a recent renewal submission to OMB, we estimated the collection of information burden for the rule is 310,983 hours. The additional burden hours associated with the proposed amendments to rule 2a–7 would increase the renewal estimate to 378,646 hours annually.[330]

B. Rule 22e–3

Proposed rule 22e–3 would permit a money market fund to suspend redemptions and postpone the payment of proceeds pending board-approved liquidation proceedings, provided that the fund notifies the Commission by electronic mail of its decision to do so.[331] The proposed rule is intended to reduce the vulnerability of investors to the harmful effects of a run on a fund, and minimize the potential for disruption to the securities markets. The proposed notification requirement is a collection of information under the PRA, and is designed to assist Commission staff in monitoring a money market fund's suspension of redemptions, which would otherwise be prohibited. Only money market funds that break the buck and begin board-approved liquidation proceedings would be able to rely on the rule. The respondents to this information collection therefore would be money market funds that break the buck and elect to rely on the exemption afforded by the rule. Compliance with the notification requirements of rule 22e–3 would be necessary for money market funds that seek to rely on rule 22e–3 to suspend redemptions and postpone payment of proceeds pending a liquidation, and would not be kept confidential.

We estimate that, on average, one money market fund would break the buck and liquidate every six years.[332] Staff estimates that a fund providing the required electronic mail notice under proposed rule 22e–3 would spend approximately 1 hour of an in-house attorney's time to prepare and submit the notice. Given these estimates, the total annual burden of proposed rule 22e–3 for all money market funds would be approximately 10 minutes.[333]

C. Monthly Reporting of Portfolio Holdings

1. Rule 30b1–6 and Form N–MFP

Proposed rule 30b1–6 would require money market funds to file an electronic monthly report on proposed Form N–MFP within two business days after the end of each month. The proposed rule is intended to improve transparency of information about money market funds' portfolio holdings and facilitate oversight of money market funds. The information required by the proposed form would be data-tagged in XML format and filed through EDGAR. The respondents to rule 30b1–6 would be investment companies that are regulated as money market funds under rule 2a–7. Compliance with proposed rule 30b1–6 would be mandatory for any fund that holds itself out as a money market fund in reliance on rule 2a–7. Responses to the disclosure requirements would not be kept confidential.

We estimate that 750 money market funds would be required by rule 30b1–6 to file, on a monthly basis, a complete Form N–MFP disclosing certain information regarding the fund and its portfolio holdings. For purposes of this PRA analysis, the burden associated with the requirements of proposed rule 30b1–6 has been included in the collection of information requirements of proposed Form N–MFP.

Based on our experience with other interactive data filings, we estimate that money market funds would require an average of approximately 40 burden hours to compile, tag and electronically file the required portfolio holdings information for the first time and an average of approximately 8 burden hours in subsequent filings.[334] Based on these estimates, we estimate the average annual burden over a three-year period would be 107 hours per money market fund.[335] Based on an estimate of 750 money market funds submitting Form N–MFP in interactive data format, each incurring 107 hours per year on average, we estimate that, in the aggregate, Form N–MFP would result in 80,250 burden hours, on average, for all money market funds for each of the first three years.

2. Rule 30b1–5 and Form N–Q

Our proposed amendments to rule 30b1–5 would exempt money market funds from the requirement to file a schedule of investments pursuant to Item 1 of Form N–Q. The proposed amendment is intended to eliminate unnecessarily duplicative disclosure requirements. The proposed amendment would only affect investment companies that are regulated as money market funds under rule 2a–7.

We estimate that 750 money market funds would be affected by the proposed amendment to rule 30b1–5. For the purposes of this PRA analysis, the decrease in burden hours resulting from the proposed amendment is reflected in the collection of information requirements for Form N–Q.

We estimate that money market funds would require an average of approximately 4 hours to prepare the schedule of investments required pursuant to Item 1 of Form N–Q. Based on these estimates, we estimate that the average annual burden avoided would be 8 hours per fund.[336] Based on an estimate of 750 money market funds filing Form N–Q, each incurring 8 burden hours per year on average, we estimate that, in the aggregate, our proposed exemption would result in a decrease of 6000 burden hours associated with Form N–Q.[337]

D. Request for Comments

We request comment on whether these estimates are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii)

[329] The estimate is based on the following calculation: (25 fund complexes × 1 hour) = 25 hours.

[330] This estimate is based on the following calculation: 310,983 (estimated in 2a–7 renewal submission) + 30,438 (stress testing) + 37,200 (website posting) + 25 hours (reporting 17a–9 transactions) = 378,646 hours.

[331] *See* proposed rule 22e–3(c).

[332] As discussed above, since the adoption of rule 2a–7 in 1983, only two money market funds have broken the buck.

[333] These estimates are based on the following calculations: (1 hour ÷ 6 years) = 10 minutes per year.

[334] We understand that the required information is currently maintained by money market funds pursuant to other regulatory requirements or in the ordinary course of business. Accordingly, for the purposes of our analysis, we do not ascribe any time to producing the required information.

[335] The staff estimates that a fund would make 36 filings in three years. The first filing would require 40 hours and subsequent filings would require 8 hours each, for an average annual burden of 107 hours (1 filing × 40 hours = 40 hours; 35 filings × 8 hours = 280 hours; 40 hours + 280 hours = 320 hours; 320 hours ÷ 3 years = 107 hours). Thereafter, filers generally would not incur the start-up burdens applicable to the first filing.

[336] Funds are required to file a quarterly report on Form N–Q after the close of the first and third quarters of each fiscal year.

[337] The estimate is based on the following calculation: 750 money market funds × 8 hours per money market fund = 6000 hours.

determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the Office of Management and Budget, Attention Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503, and should send a copy to Elizabeth Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–11–09. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this Release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–11–09, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE., Washington, DC 20549–0213.

V. Cost Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. We have identified certain costs and benefits of the proposed amendments and new rules, and we request comment on all aspects of this cost benefit analysis, including identification and assessment of any costs and benefits not discussed in this analysis. We seek comment and data on the value of the benefits identified. We also welcome comments on the accuracy of the cost estimates in each section of this analysis, and request that commenters provide data that may be relevant to these cost estimates. In addition, we seek estimates and views regarding these costs and benefits for particular covered institutions, including small institutions, as well as any other costs or benefits that may result from the adoption of these proposed amendments and new rules.

A. Rule 2a–7

1. Second Tier Securities, Portfolio Maturity and Liquidity Requirements

We are proposing several changes to the risk-limiting conditions of rule 2a–7. While we believe that these changes would impart substantial benefits to money market funds, we recognize that they also may impose certain costs.

First, we would limit money market fund investments to first tier securities, *i.e.,* securities receiving the highest short-term debt ratings from the requisite NRSROs or securities that the fund's board of directors or its delegate determines are of comparable quality.[338] We also are proposing to limit money market funds to acquiring long-term securities that have received long-term ratings in the highest two ratings categories.[339]

Second, we are proposing certain changes to rule 2a–7's portfolio maturity limits. We are proposing to reduce the maximum weighted average maturity of a money market fund permitted by rule 2a–7 from 90 days to 60 days.[340] We also are proposing a new maturity limitation based on the ''weighted average life'' of fund securities that would limit the portion of a fund's portfolio that could be held in longer term floating- or variable-rate securities. This restriction would require a fund to calculate the weighted average maturity of its portfolio without regard to interest rate reset dates. The weighted average life of a fund's portfolio would be limited to 120 days.[341] Finally, we are proposing to delete a provision in rule 2a–7 that permits money market funds not relying on the amortized cost method of valuation to acquire Government securities with a remaining maturity of up to 762 calendar days. Under the amended rule, money market funds could not acquire any security with a remaining maturity of more than 397 days, subject to the maturity shortening provisions for floating- and variable-rate securities and securities with a Demand Feature.[342]

Third, we are proposing new liquidity requirements on money market funds. Under the proposed amendments, money market funds would be prohibited from acquiring securities unless, at the time acquired, they are liquid, *i.e.,* securities that can be sold or disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the money market fund.[343] We also propose to limit taxable retail money market funds and taxable institutional money market funds to acquiring Daily Liquid Assets unless five percent of a retail fund's and 10 percent of an institutional fund's assets are Daily Liquid Assets.[344]

In addition, our proposed amendments to rule 2a–7 would impose weekly liquidity requirements on money market funds. Specifically, retail and institutional money market funds would not be permitted to acquire any securities other than weekly liquid assets if, after the acquisition, (i) the retail fund would hold less than 15 percent of its total assets in weekly liquid assets and (ii) the institutional fund would hold less than 30 percent of its total assets in weekly liquid assets.[345] Finally, we are proposing to require that a money market fund at all times hold daily and weekly liquid assets sufficient to meet reasonably foreseeable redemptions in light of its obligations under section 22(e) of the Act and any commitments the fund has made to shareholders.[346]

Our proposed amendments would rely on a money market fund's board of directors to determine, no less frequently than once each calendar year, whether the money market fund is intended to be offered to institutional investors or has the characteristics of a fund that is intended to be offered to institutional investors, based on the: (i) Nature of the record owners of fund shares; (ii) minimum amount required to be invested to establish an account; and (iii) historical cash flows resulting, or expected cash flows that would result, from purchases and redemptions.[347]

a. Benefits

We believe that the proposed amendments to rule 2a–7's risk-limiting conditions would be likely to produce broad benefits for money market fund investors. First, they should reduce money market funds' exposure to certain credit, interest rate, and spread risks. For example, precluding money market funds from investing in second tier securities would decrease money market funds' exposure to credit risk. Reducing the maximum weighted average maturity of money market

[338] *See* proposed rule 2a–7(a)(11)(iii); proposed rule 2a–7(a)(11)(iv); proposed rule 2a–7(c)(3).

[339] *See* proposed rule 2a–7(a)(11)(iv)(A).

[340] *See* proposed rule 2a–7(c)(2)(ii).

[341] *See* proposed rule 2a–7(c)(2)(iii).

[342] *See* proposed rule 2a–7(c)(2)(i); rule 2a–7(d)(1)–(5).

[343] *See* proposed rule 2a–7(c)(5)(i).

[344] *See* proposed rule 2a–7(c)(5)(iii). This restriction would not apply to tax exempt money market funds.

[345] *See* proposed rule 2a–7(c)(5)(iv).

[346] *See* proposed rule 2a–7(c)(5)(ii).

[347] *See* proposed rule 2a–7(a)(18) (defining ''Institutional Fund'').

funds' portfolios would further decrease their interest rate sensitivity, as well as reduce their exposure to credit risk. Introducing the weighted average life limitation on money market funds' portfolios would limit credit spread risk and interest rate spread risk to funds from longer term floating- or variable-rate securities.

We expect that the proposed amendments also would bolster the ability of money market funds to maintain a stable net asset value during times when the level of shareholder redemption demand is high. Fund portfolios with a lower weighted average maturity that include a limited amount of longer term floating- or variable-rate securities would turn over more quickly and the fund would be better able to increase its holdings of highly liquid securities in the face of illiquid markets than funds that satisfy current maturity requirements. The proposed liquidity requirements are designed to increase a money market fund's ability to withstand illiquid markets by ensuring that the fund acquires only liquid securities and that a certain percent of its assets are held in daily and weekly liquid assets. These requirements also should decrease the likelihood that a fund would have to realize losses from selling portfolio securities into an illiquid market to satisfy redemption requests. Because the proposed amendments would require a fund to have a contractual right to receive cash for the daily and weekly liquid assets, rather than the current standard, which assumes that a fund would be able to find a buyer for its securities within seven days, we believe that the proposed required liquidity requirements would allow money market fund advisers to more easily adjust the funds' portfolios to increase liquidity when needed.

We believe that a reduction of these credit, interest rate, spread, and liquidity risks would better enable money market funds to weather market turbulence and maintain a stable net asset value per share. The proposed amendments are designed to reduce the risk that a money market fund will break the buck and therefore prevent losses to fund investors. To the extent that money market funds are more stable, they also would reduce systemic risk to the capital markets and provide a more stable source of financing for issuers of short-term credit instruments, thus promoting capital formation. If money market funds become more stable investments as a result of the proposed rule amendments, they may attract further investment, increasing their role as a source of capital formation.

b. Costs

We recognize that there are potential costs that would result if we adopted our proposed changes regarding second tier securities, portfolio maturity, and liquidity. Second tier securities, less liquid securities, and longer term credit instruments typically pay a higher interest rate and, therefore, the proposed amendments may decrease money market funds' yields.

Precluding ownership of second tier securities also may deprive money market funds of some benefits of reduced risk through diversification. We invite comment on whether the benefits of reducing credit risk through precluding purchases of second tier securities justifies the costs of the lost diversification benefits that second tier securities may provide.

If, as a result of the proposed amendments, there is a smaller set of Eligible Securities for a money market fund to choose from, that may increase the cost of those securities if their supply is limited. In particular, to the extent that the proposed liquidity requirements increase demand for highly liquid securities that is not countered by increased supply, the cost of those securities may rise as well. Increased costs of portfolio securities will have a negative impact on money market fund yield. Finally, to the extent that actual investor redemptions are significantly lower than our proposed liquidity requirements, money market funds may achieve lower yields as a result of complying with these liquidity requirements.

Although the impact on individual funds would vary significantly, we estimate that the proposed changes to rule 2a–7's requirements regarding portfolio quality, portfolio maturity, and liquidity would decrease the yield that a money market fund is able to achieve in the range of 2 to 4 basis points. We understand that the majority of money market funds are already in compliance with these proposed requirements due either to their own risk-limiting actions or to their voluntary compliance with the recommendations contained in the ICI Report. Accordingly, we expect that the decrease in yield from these changes to rule 2a–7's risk-limiting conditions would have a relatively minor impact on current money market fund yields.

However, this decreased yield may limit the range of choices that individual money market fund investors currently have to select their desired level of investment risk. This might cause some investors to shift their assets to, among other places, offshore or other enhanced cash funds unregulated by rule 2a–7 that are able to offer a higher yield. Alternatively, some investors may choose to shift their assets to bank deposits. When markets come under stress, investors may be more likely to withdraw their money from these offshore or private funds due to their perceived higher risk [348] and substantial redemptions from those funds and accompanying sales of their portfolio securities could increase systemic risk to short-term credit markets, which would impact money market funds. In addition, the proposed stricter portfolio quality, maturity, and liquidity requirements may result in some money market funds having fewer issuers from which to select securities if some issuers only offer second tier securities, less liquid securities or a larger percentage of longer term securities.

Our proposed portfolio quality, maturity, and liquidity restrictions also may impact issuers. Issuers may experience increased financing costs to the extent that they are unable to find alternative purchasers of their second tier securities, less liquid securities, longer term securities, or floating- and variable-rate securities at previous market rates. As noted earlier in the release, we do not believe that money market funds currently hold a significant amount of second tier securities, or securities that are illiquid at acquisition.[349] Thus, we expect that the proposed amendment's impact on issuers of these securities would be minimal. If the proposed amendments result in companies or governments issuing shorter maturity securities, those issuers may be exposed to an increased risk of insufficient demand for their securities and adverse credit market conditions because they must roll over their short-term financing more frequently. We note that this impact could be mitigated if money market funds sufficiently staggered or ''laddered'' the maturity of the securities in their portfolios. The markets for longer term or floating- and variable-rate securities may become less liquid if the proposed rule amendments cause issuance of these instruments to decline. We generally expect that issuers of floating- or variable-rate securities would respond to the proposed amendments by issuing a greater

[348] During the recent financial crisis, investors redeemed substantial amounts of assets from ultra-short bond funds and certain offshore money market funds. *See* ICI Report, *supra* note 6, at 106–07.

[349] *See supra* note 101 and accompanying and following text, and Section II.C.1.

proportion of their securities with shorter final maturities.

Our proposed requirement that fund boards distinguish between retail and institutional money market funds would require boards to make a determination based on an understanding of the investors in the fund and their behavior. Our proposed liquidity requirements also would require money market funds to ''know their customers,'' including their expected redemption behavior. We expect that most money market funds already have methods to understand their customers and their redemption needs because ''knowing your customer'' is already a best practice. As a result, we also do not expect that these requirements would impose any material costs on funds.

We do not believe that eliminating the provision in rule 2a–7 that allowed money market funds relying solely on the penny-rounding method of pricing to hold Government securities with remaining maturities of up to 762 days would have a material impact on money market funds, investors, or issuers of longer term Government securities because we believe that substantially all money market funds rely on the amortized cost method of valuation, and not exclusively on the penny-rounding method of pricing, and thus are not eligible to rely on this exception.

We request comment on these costs and benefits. Would money market fund investors benefit from the proposed portfolio quality, maturity and liquidity requirements? Would money market funds experience a significant yield and diversification impact from the proposed changes to rule 2a–7's second tier security, portfolio maturity, and liquidity requirements? We note that the highest rated money market funds currently must have a weighted average maturity of 60 days or less, the average weighted average maturity for taxable money market funds as of June 16, 2009 was 53 days, and very few money market funds hold second tier securities.[350] What other impacts would these changes have on money market funds? What effect would such changes have on the short-term credit market and issuers of longer term or debt instruments held to satisfy the daily or weekly liquidity requirements? How would the proposed amendments impact issuers of, and the market for, longer term variable- or floating-rate debt securities? We encourage commenters to provide empirical data to support their analysis.

[350] *See supra* text accompanying note 101, note 145 and accompanying text, and note 147.

2. Use of NRSROs

As discussed above, we are considering an approach that would require a money market fund's board of directors to designate NRSROs whose credit ratings the fund would use in determining the eligibility of portfolio securities under rule 2a–7 and that the board would annually determine issue credit ratings that are sufficiently reliable for that use. As we also noted above, we proposed eliminating references to NRSROs in rule 2a–7 last year.[351] For a discussion of the costs and benefits of that proposal, please see Section VI of the NRSRO References Release.[352] Are there additional factors we should consider since that release was published?

We request comment on the approach we are considering. We specifically request comment regarding the standard we are considering for the board's annual determination, *i.e.*, that the designated NRSROs issue ratings that are sufficiently reliable for use in determining the eligibility of portfolio securities. Is this standard appropriate, and if not, what would be a more appropriate standard? We expect that in making their initial designation and their annual determination, fund boards would review a presentation by the fund's adviser regarding the relative strength of relevant NRSROs' ratings and ratings criteria. What kind of guidance, if any, should the Commission provide with respect to such a standard?

According to the ICI Report, a requirement that funds designate three or more NRSROs to use in determining the eligibility of portfolio securities could encourage competition among NRSROs to achieve designation by money market funds.[353] We anticipate that the approach we are considering, which would require fund boards annually to determine that the designated NRSROs issue credit ratings sufficiently reliable to use in determining the eligibility of portfolio securities, may promote competition among NRSROs to produce the most reliable ratings in order to obtain designation by money market funds. In addition to the potential for competition among existing NRSROs, the proposed amendment might encourage new NRSROs that issue ratings specifically for money market fund instruments to enter the market. As we noted above, however, the staff believes it is reasonable to assume that the three NRSROs that issued almost 99 percent of all outstanding ratings across all categories that were issued by the 10 registered NRSROs as of June 2008, also issued well over 90 percent of all outstanding ratings of short term debt.[354] If fund boards were required to designate a minimum of three NRSROs and all money market fund boards chose to designate these three NRSROs, the requirement could result in decreased competition among NRSROs. We request comment on the impact that the approach we are considering, particularly the minimum number of NRSROs, might have on competition among NRSROs. We also request comment on the impact, if any, of this approach with respect to the efficiency of fund managers. Finally, we request comment on any potential benefits this approach might have with respect to money market funds or NRSROs.

We recognize that there could be costs associated with the approach we are considering. Staff estimates that the costs of this approach would include: Initial costs for the board to designate NRSROs, as well as an annual cost to determine that designated NRSROs continue to issue ratings that are sufficiently reliable for use in determining the eligibility of portfolio securities. We expect that fund advisers currently evaluate the strength of NRSRO ratings and ratings criteria as part of the analysis they perform (under delegated authority from the board) in determining the eligibility of portfolio securities, and that this evaluation includes consideration of whether an NRSRO's rating is sufficient for that use. Accordingly, we anticipate that fund advisers would not incur additional time to perform an evaluation that would be the basis for their recommendations to the board when it makes its initial designation and annual determination, but the adviser would incur costs to draft those recommendations in a presentation or report for board review.

Under the current rule, if a money market fund invests in unrated or second tier securities, the adviser must monitor all NRSROs in case an unrated or second tier security has received a rating from any NRSRO below the second highest short-term rating category.[355] Because fund advisers currently monitor NRSROs, we do not expect that limiting the number of NRSROs that a fund would have to monitor to a number designated by the fund board would result in increased

[351] *See* NRSRO References Proposal, *supra* note 105.

[352] *See id.*

[353] *See* ICI Report, *supra* note 6, at 82.

[354] *See supra* note 116 and accompanying text.

[355] *See* rule 2a–7(c)(6)(i)(A)(2).

costs to fund advisers to monitor NRSROs.

We request comment on our analysis of the potential costs and benefits of a requirement to designate NRSROs. Do funds currently evaluate NRSRO ratings for reliability? Would there be benefits to funds and their advisers if the board designates three or more NRSROs? Would fund advisers benefit from having fewer NRSROs to monitor? Would fund advisers incur significant costs to make presentations to the board recommending which NRSROs to designate? What would be involved, including specific costs, for fund management to evaluate whether an NRSRO ''issues credit ratings that are sufficiently reliable'' for the fund's determination of whether a security is an eligible security? Would funds incur costs if we required them to disclose designated NRSROs in the statement of additional information?

We do not anticipate that the designation of NRSROs would have an adverse impact on capital formation. We request comment on whether requiring fund boards to designate NRSROs would have an impact on capital formation.

3. Stress Testing

We are proposing to require that money market fund boards of directors adopt written procedures that provide for the periodic stress testing of each money market fund's portfolio.[356] The procedures would require testing of the fund's ability to maintain a stable net asset value per share based upon certain hypothetical events.[357] The procedures also would have to provide for a report to be delivered to the fund's board of directors at its next regularly scheduled meeting on the results of the testing and an assessment by the fund's adviser of the fund's ability to withstand the events (and concurrent occurrences of those events) that are reasonably likely to occur within the following year.[358]

We anticipate that stress testing would give fund advisers a better understanding of the effect of potential market events and shareholder redemptions on their funds' ability to maintain a stable net asset value, the fund's exposure to the risk that it would break the buck, and actions the adviser may need to take to mitigate the possibility of the fund breaking the buck. We believe that many funds currently conduct stress testing as a matter of routine fund management and business practice. We anticipate, however, that funds that do not currently perform stress testing and funds that may revise their procedures in light of the proposed rule amendments would give their managers a tool to better manage those risks. For fund boards of directors that do not currently receive stress test results, we believe that the regular reports and assessments would provide money market fund boards a better understanding of the risks to which the fund is exposed.

We understand that today rigorous stress testing is a best practice followed by many money market funds.[359] We understand that the fund complexes that conduct stress tests include smaller complexes that offer money market funds externally managed by advisers experienced in this area of management.[360] Accordingly, staff estimates that as a result of the proposed amendments to adopt stress testing procedures, (i) funds that currently conduct rigorous stress testing, including tests for hypothetical events listed in the proposed amendment (and concurrent occurrences of those events) would incur some cost to evaluate whether their current test procedures would comply with the proposed rule amendment, but would be likely to incur relatively few costs to revise those procedures or continue the stress testing they currently perform, (ii) funds that conduct less rigorous stress testing, or that do not test for all the hypothetical events listed in the proposed rule amendment, would incur somewhat greater expenses to revise those procedures in light of the proposed amendments and maintain the revised testing, and (iii) funds that do not conduct stress testing would incur costs to develop and adopt stress test procedures and conduct stress tests. As noted above, we believe that there is a range in the extent and rigor of stress testing currently performed by money market funds. We also expect that stress test procedures are or would be developed by the adviser to a fund complex for all money market funds in the complex while specific stress tests are performed for each individual money market fund. We estimate that a fund complex that currently does not conduct stress testing would require approximately 1 month for 2 risk management analysts and 2 systems analysts to develop stress test procedures at a cost of approximately $155,000, 21 hours for a risk management analyst to draft the procedures, and 3 hours of board of directors' time to adopt the procedures for a total of approximately $173,000.[361] Costs for fund complexes that would have to revise or fine-tune their stress test procedures would be less. For purposes of this cost benefit analysis, we estimate that these funds would incur half the costs of development, for a total of approximately $95,000.[362] Funds that would not have to change their test procedures would incur approximately $20,000 to determine compliance with the proposed amendment, and to draft and adopt the procedures.[363] We also would anticipate that if there is a demand to develop stress testing procedures, third parties may develop programs that funds could purchase for less than our estimated cost to develop the programs themselves.

As with the development of stress test procedures, the costs funds would incur each year as a result of the proposed amendments to update test procedures, conduct stress tests and provide reports on the tests and assessments to the board of directors would vary. Funds that currently conduct stress tests already incur costs to perform the tests. In addition, some of those funds may currently provide reports to senior management (if not the board) of their

[356] Proposed rule 2a–7(c)(8)(ii)(D).

[357] The proposed provision includes as hypothetical events a change in short-term interest rates, an increase in shareholder redemptions, a downgrade of or default on a portfolio security, and widening or narrowing of spreads between yields on a benchmark selected by the fund and securities held by the fund. *See* proposed rule 2a–7(c)(8)(ii)(D)(*1*).

[358] Proposed rule 2a–7(c)(8)(ii)(D)(*2*), (*3*). The report must include dates on which the testing was performed and the magnitude of each hypothetical event that would cause the deviation of the money market fund's net asset value calculated using available market quotations (or appropriate substitutes that reflect current market conditions) from its net asset value per share, calculated using amortized cost, to exceed ½ of 1%.

[359] As noted above, the ratings agencies stress test the portfolios of money market funds they rate. In addition, the Irish Financial Services Authority requires stress testing of money market funds domiciled in Ireland, and the Institutional Money Market Funds Association provides guidance for its members in stress testing money market fund portfolios. *See supra* notes 214–215 and accompanying text.

[360] These complexes do not, however, meet the definition of ''small entities'' under the Investment Company Act for purposes of the Regulatory Flexibility Act of 1980. 5 U.S.C. 603(a). *See infra* note 417.

[361] This estimate is based on the following calculations: $275/hour × 280 hours (2 senior risk management specialists) + ($244/hour × 320 hours (2 senior systems analysts) = $155,080; $275/hour (1 senior risk management specialist) × 21 hours = $5775; $4000/hour × 3 hours = $12,000; $155,080 + $5775 + $12,000 = $172,855.

[362] This estimate is based on the following calculation: (155,080 × 0.5) (revise procedures) + $5775 (draft procedures) + $12,000 (board approval) = $93,315.

[363] This estimate is based on the following calculation: $275/hour (senior risk management specialist) × 8 hours = $2200; $2200 + $5775 + $12,000 = $19,975.

test results. We assume, however, that few, if any, fund advisers provide a regular assessment to the board of the fund's ability to withstand the events reasonably likely to occur in the following year. For that reason, we estimate that all fund complexes would incur costs of $3000 to provide a written report on the test results to the board, $4000 to provide an assessment to the board and $10 to retain records of the reports and assessments for a total annual cost to a fund complex of approximately $42,000.[364] We estimate that a portion of funds would incur additional costs each year to perform stress tests and update their procedures each year, up to a maximum of approximately $113,000.[365]

For purposes of this cost benefit analysis, Commission staff has estimated that 25 percent of fund complexes (or 43 complexes) would have to develop stress test procedures, 50 percent (or 85) would have stress test procedures, but have to revise those procedures, and 25 percent of complexes (or 43 complexes) would review the procedures without having to change them. Based on these estimates, staff further estimates that the total one time costs for fund complexes to develop or refine existing stress test procedures would be approximately $19 million.[366] In addition, staff estimates that the annual costs to all funds to conduct stress tests, update test procedures, provide reports and assessments to fund boards and retain records of the reports and assessments would be approximately $17 million.[367]

We request comment on our estimates. We are particularly interested in comments regarding how many funds currently conduct stress testing, the extent and nature of that testing, including whether the procedures can be adopted on a complex wide basis, and the costs to develop rigorous stress testing procedures. For those money market funds that have stress test procedures, how significantly would they have to change those procedures in light of the proposed rule amendment? What costs would they incur, including specific costs for personnel that would be involved in changes?

4. Repurchase Agreements

We are proposing to modify the conditions under which a money market fund may treat the acquisition of a repurchase agreement collateralized fully to be an acquisition of the repurchase agreement's collateral for purposes of rule 2a–7's diversification requirement.[368] Money market funds would be able to adopt this ''look-through'' treatment only with respect to repurchase agreements collateralized by cash items or Government securities [369] and as to which the board of directors or its delegate has evaluated the creditworthiness of the counterparty.[370]

We believe that the proposed changes would limit money market funds' exposure to credit risk. Collateral other than cash items and Government securities might not adequately protect money market funds because the funds may be unable to liquidate the collateral without incurring a loss if the counterparty defaults. The creditworthiness evaluation, moreover, would make it less likely that a money market fund enters into repurchase agreements with counterparties that will default and be exposed to risks related to the collateral. As discussed above, we believe that the reduction of credit risk would better enable money market funds to weather market turbulence and maintain a stable net asset value per share.

We recognize that these proposed changes could result in costs to money market funds. The limitation on money market funds' ability to invest in repurchase agreements collateralized with securities other than cash items and Government securities may result in lower yields for money market funds to the extent that other investment opportunities do not provide the same returns as those agreements. The limitation also could lead to an increase in the counterparties' short-term financing costs. Counterparties may have to substitute such repurchase agreements with other sources of financing linked to the same type of collateral. If counterparties limited their own investments in securities that are no longer permissible collateral, the issuers of such securities could also be indirectly affected by our proposed change. The restrictions on repurchase agreements held by money market funds might potentially affect the functioning of these important markets. We invite comment on what effects, if any, these restrictions might have on the markets for repurchase agreements.

The creditworthiness evaluation would also impose additional costs. A credit risk evaluation, however, is required with respect to other portfolio securities and to repurchase agreements for which money market funds do not adopt a look-through treatment.[371] We understand, moreover, that many money market fund complexes already perform a creditworthiness evaluation for all repurchase agreement counterparties. Accordingly, we believe that the additional cost imposed on money market funds, if any, would be minimal.

We request comment on any potential costs and benefits. Would the proposed amendments significantly reduce the risk that money market funds incur losses upon the default of their repurchase agreement counterparties? What effect would the limitation on permissible collateral have on counterparties' ability to obtain short-term financing? How would the proposed change impact issuers of securities that would no longer be permissible collateral? Would the required creditworthiness evaluation impose any material cost on money market funds? We encourage commenters to provide empirical data to support their analysis.

5. Public Web site Posting

The proposed amendments to rule 2a–7 would require money market funds to post monthly portfolio information on their Web sites.[372] The rule is intended to provide shareholders with timely information about the securities held by the money market fund.

We anticipate that the proposal to require funds to post monthly portfolio information on their Web sites would benefit investors by providing them a better understanding of their own risk exposure and thus enabling them to make better informed investment decisions. The proposed rule may thus

[364] This estimate is based on the following calculation: *Report:* $275/hour × 10 hours (senior risk management specialist) + $62 × 2 hours (administrative assistant) = $2874; *Assessment:* $275/hour × 15 hours (senior risk management specialist) = $4125; *Record retention:* $62/hour × 0.1667 hours (administrative assistant) = $10.33; ($2874 + $4125 + $10) × 6 (board meetings per year) = $42,054.

[365] This estimate is based on the following calculations: *Tests:* $275/hour × 15 hours (senior risk management specialist) + $244/hour × 20 hours (senior systems analyst) = $9,005; $9,005 × 12 (monthly testing) = $108,060; *Update procedures:* $275/hour × 5 hours (senior risk management specialist) + $4000/hour × 1 hour = $5375; $108,060 + $5375 = $113,435.

[366] This estimate is based on the following calculation: (43 × $173,000) + (85 × $95,000) + (43 × $20,000) + (171 × $5775) + (171 × $12,000) = $19,413,525.

[367] This estimate is based on the following calculation: (43 × $113,000) + (85 × $113,000 × 0.5) + (171 × $42,054 (reports and assessments)) = $16,852,734.

[368] *See* rule 2a–7(c)(4)(ii)(A). The rule 5b–3(c)(1) definition of collateralized fully, which is cross-referenced by rule 2a–7(a)(5), sets forth the related conditions. Under the current definition, a money market fund may look through repurchase agreements collateralized with cash items, Government securities, securities with the highest rating or unrated securities of comparable credit quality.

[369] Proposed rule 2a–7(a)(5).

[370] Proposed rule 2a–7(c)(4)(ii)(A).

[371] *See* rule 2a–7(c)(3)(i).

[372] Proposed rule 2a–7(c)(12).

instill more discipline into portfolio management and reduce the likelihood of a money market fund breaking the buck. Finally, any increased costs to money market funds from monthly reporting may be offset to a degree by the proposal to exclude them from current requirements to file quarterly portfolio holdings information on Form N–Q. For the purposes of the PRA analysis, we estimate that money market funds would realize, in the aggregate, a decrease of 6,000 burden hours, or $470,880, from this exclusion.[373]

The proposed website posting requirement would also impose certain costs on funds. We estimate that, for the purposes of the PRA, money market funds would be required to spend 24 hours of internal money market fund staff time initially to develop a webpage, at a cost of $4944 per fund.[374] We also estimate that all money market funds would be required to spend 4 hours of professional time to maintain and update the webpage each month, at a total annual cost of $9888 per fund.[375] We believe, however, that our estimates may overstate the actual costs that would be incurred to comply with the website posting requirement because many funds currently post their portfolio holdings on a monthly, or more frequent, basis.[376] For purposes of this cost benefit analysis, Commission staff estimates that 20 percent of money market portfolios (150 portfolios) do not currently post portfolio holdings information on their websites. Based on these estimates, we estimate that the total initial costs for the proposed website disclosure would be $741,600.[377] In addition, we estimate that the annual costs for all money market funds to maintain and update their webpages would be $7.4 million.[378]

In addition, monthly website disclosure may impose other costs on funds and their shareholders. For example, more frequent disclosure of portfolio holdings may arguably expand the opportunities for professional traders to exploit this information by engaging in predatory trading practices, such as front-running. However, given the short-term nature of money market fund investments and the restricted universe of eligible portfolio securities, we believe that the risk of trading ahead is severely curtailed in the context of money market funds.[379] For similar reasons, we believe that the potential for ''free riding'' on a money market fund's investment strategies, *i.e.,* obtaining for free the benefits of fund research and investment strategies, is minimal. Given that shares of money market funds are ordinarily purchased and redeemed at the stable price per share, we believe that there would be relatively few opportunities for profitable arbitrage. Thus, we estimate that the costs of predatory trading practices under this proposal would be minimal. We request comment on the analysis above, and on any other potential costs and benefits of the proposed website disclosure requirement.

6. Processing of Transactions

Our proposal would require that a money market fund's board determine in good faith, on an annual basis, that the fund (or its transfer agent) has the capacity to redeem and sell securities at prices that do not correspond to the fund's stable net asset value per share.[380] As discussed above, the aftermath of 2008 market events revealed that some funds had not implemented systems to calculate redemptions at prices other than the funds' stable net asset value per share.[381] Because of this failure, transactions were processed manually, which extended the time that investors had to wait for the proceeds from their redeemed shares.

As noted in Section II.G above, money market funds may be required to process transactions at a price other than the fund's stable share price and pay the proceeds of redemptions within seven days (or a shorter time that the fund has represented). We believe that funds that do not have the operational capacity to price shares at other than the stable share price risk being unable to meet their obligations under the Act. We expect that the proposed amendments would help eliminate the risk that money market funds would not be able to meet these obligations in the event the fund breaks a buck. Shareholders would benefit from the proposed amendments because they would be more likely to receive the proceeds from their investments in the event of a liquidation.

Because funds are obligated to redeem at other than stable net asset value per share, there should be no new cost associated with the requirement for the funds (or their transfer agents) to have the systems that can meet these requirements. To the extent that funds and transfer agents have to change their systems, however, these changes will likely entail costs. If a fund complex were to require one month of a senior systems analyst's time in assuring that the required systems are in place, the total cost for the fund complex would be $39,040.[382] Based on this estimate we estimate that, if one-third of the fund complexes are not currently able to redeem at prices other than stable net asset value, the total cost to all money market funds would be $2,225,280.[383] We also anticipate that the board's determination would result in costs. We anticipate that the board's determination would be based on a review at a regularly scheduled board meeting of the fund adviser's or the transfer agent's certification that the operational systems have the requisite capacity. Commission staff estimates that this review would take about 15 minutes of board time at a cost of $1000.[384] Based on this estimate we estimate that the total cost to all money market funds of board determinations would be $171,000.[385] We request comment on the analysis above, and on any other potential costs and benefits of this proposed rule amendment.

B. Rule 17a–9

The Commission is proposing to amend rule 17a–9 to expand the circumstances under which affiliated persons can purchase money market fund portfolio securities. Under the proposed amendment, a money market fund could sell a portfolio security that has defaulted (other than an immaterial default unrelated to the financial condition of the issuer) to an affiliated person for the greater of the security's amortized cost value or market value (plus accrued and unpaid interest), even though the security continued to be an eligible security.[386]

The proposed amendment essentially would codify past Commission staff no-

[373] This estimate is based on our experience with other filings and an estimated hourly wage rate of $78.48 (6000 hours × $78.48 = $470,880).

[374] The staff estimates that a webmaster at a money market fund would require 24 hours (at $206 per hour) to develop and review the webpage (24 hours × $206 = $4944).

[375] The staff estimates that a webmaster would require 4 hours (at $206 per hour) to maintain and update the relevant webpages on a monthly basis (4 hours × $206 × 12 months = $9888).

[376] *See supra* note 325 and accompanying text.

[377] This calculation is based on the following estimate: ($4944 × 150 portfolios) = $741,600.

[378] This calculation is based on the following estimate: ($9888 × 750 portfolios) = $7,416,000.

[379] *See* ICI Report, *supra* note 6, at 93.

[380] Proposed rule 2a–7(c)(1).

[381] *See supra* note 262 and accompanying text.

[382] This estimate is based on the following calculation: $244/hour × 160 hours (senior systems analyst) = $39,040.

[383] This is based on the following calculation: (171 (fund complexes) ÷ 3) × $39,040 = $2,225,280.

[384] This is based on the following calculation: $4000/hour (board time) × 0.25 hours = $1000.

[385] This is based on the following calculation: $1000 × 171 (fund complexes) = $171,000.

[386] *See* proposed rule 17a–9(a).

action letters [387] and should benefit investors by enabling money market funds to dispose of troubled securities (*e.g.,* securities depressed in value as a result of market conditions) from their portfolios quickly without any loss to fund shareholders. It also would benefit money market funds by eliminating the cost and delay of requesting no-action assurances in these scenarios and the uncertainty whether such assurances will be granted.[388] We do not believe that there are any costs associated with this amendment, but we request comment on this analysis.

In addition, we are proposing to permit affiliated persons to purchase other portfolio securities from an affiliated money market fund, for any reason, provided that such person would be required to promptly remit to the fund any profit it realizes from the later sale of the security.[389] Our staff provided temporary no-action assurances last fall to certain funds facing extraordinary levels of redemption requests for affiliated persons of such funds to purchase eligible securities from the funds at the greater of amortized cost or market value (plus accrued and unpaid interest).[390] In these circumstances, money market funds may need to obtain cash quickly to avoid selling securities into the market at fire sale prices to meet shareholder redemption requests, to the detriment of remaining shareholders. The staff also provided no-action assurances to money market funds last fall for affiliated persons of the fund to purchase at the greater of amortized cost or market value (plus accrued and unpaid interest) certain distressed securities that were depressed in value due to market conditions potentially threatening the stable share price of the fund, but that remained eligible securities and had not defaulted.[391] Money market funds and their shareholders would benefit if affiliated persons were able to purchase securities from the fund at the greater of amortized cost or market value (plus accrued and unpaid interest) in such circumstances without the time, expense, and uncertainty of applying to Commission staff for no-action assurances.

Affiliated persons purchasing such securities would have costs in creating and implementing a system for tracking the purchased securities and remitting to the money market fund any profit ultimately received as a result. We estimate that creating such a system on average would require 5 hours of a senior programmer's time, at a cost of $1460 for each of the 171 fund complexes with money market funds and a total cost of $249,660.[392] After the initial creation of this system, we expect that the time spent noting in this system that a security was purchased under rule 17a–9 would require a negligible amount of compliance personnel's time. Based on our experience, we do not anticipate that there would be many instances, if any, in which an affiliated person would be required to repay profits in excess of the purchase price paid to the fund. However, if there is a payment, it would be made to the fund. If the payment is sufficiently large, we believe that funds are likely to include it with the next distribution to shareholders, which would not result in any additional costs to the fund. We request comment on this analysis. Are our cost estimates accurate? Are there other costs in allowing an affiliated person of a money market fund to purchase portfolio securities from the fund? Are there incentives that might encourage an affiliated person to purchase securities that are not distressed in any way? If so, would such purchases result in any cost to the fund and its investors?

The Commission also is proposing a related amendment to rule 2a–7, which would require that funds report all transactions under rule 17a–9 to the Commission. We believe that this reporting requirement would benefit fund investors by allowing the Commission to monitor the purchases for possible abuses and conflicts of interest on the part of the affiliates. It also would allow the Commission to observe what types of securities are distressed and which money market funds are holding distressed securities or are subject to significant redemption pressures. This information would better enable the Commission to monitor emerging risks at money market funds. For purposes of the Paperwork Reduction Act analysis, we estimate this amendment would impose relatively small reporting costs on money market funds of $7625 per year.[393] We request comment on whether these cost estimates are reasonable. We also request comment on our analysis of the costs and benefits of this proposed rule amendment.

C. Rule 22e–3

Proposed rule 22e–3 would permit money market funds that break the buck to suspend redemptions and postpone payment of proceeds pending board-approved liquidations. The rule would thus facilitate orderly liquidations, which would protect value for fund shareholders and minimize disruption to financial markets. The rule would also enable funds to avoid the expense and delay of obtaining an exemptive order from the Commission, which we estimate would otherwise cost about $75,000,[394] and would provide legal certainty to funds that wish to suspend redemptions during a liquidation in the interest of fairness to all shareholders.

Proposed rule 22e–3 would impose certain minimal costs on funds relying on the rule by requiring them to provide prior notice to the Commission of their decision to suspend redemptions in connection with a liquidation. We estimate that, for the purposes of the PRA, the annual burden of the notification requirement would be 10 minutes for a cost of $51.[395] The proposed rule may also impose costs on shareholders who seek to redeem their shares, but are unable to do so. In those circumstances, shareholders might have to borrow funds from another source, and thereby incur interest charges and other transactional fees. We believe the potential costs associated with proposed rule 22e–3 would be minimal, however, because the proposed rule would provide a limited exemption that is only triggered in the event of a fund breaking the buck and liquidating. We request comment on this analysis, and on any other potential costs and benefits of proposed rule 22e–3.

D. Rule 30b1–6 and Form N–MFP: Monthly Reporting of Portfolio Holdings

Proposed rule 30b1–6 and Form N–MFP would require money market funds to file with the Commission interactive data-formatted portfolio holdings information on a monthly basis. We expect that the proposed rule would

[387] *See supra* Section II.H.1.

[388] Commission staff estimates that the costs to obtain staff no-action assurances range from $50,000 to $100,000.

[389] *See* proposed rule 17a–9(b)(2).

[390] Many of the no-action letters can be found on our website. *See http://www.sec.gov/divisions/investment/im-noaction.shtml#money.*

[391] *Id.*

[392] This estimate is based on the following calculation: $292/hour × 5 hours × 171 fund complexes = $249,660.

[393] This estimate is based on the following calculations: 25 (notices) + $305/hour (attorney) × 1 hour = $7625. *See supra* note 329 and accompanying text.

[394] *See* Exchange Traded Funds, Investment Company Act Release No. 28913 (Mar. 11, 2008) [73 FR 14618 (Mar. 18, 2008)] at n.301 (estimating a cost range between $75,000 and $350,000 to submit an application for relief to operate an ETF). We assume that the costs associated with an application for exemptive relief from section 22(e) would be on the low end of this range because section 22(e) exemptive applications are often less involved than ETF exemptive applications.

[395] This estimate is based on the following calculation: $305/hour × 1 ÷ 6 hour = $51.

improve the efficiency and effectiveness of the Commission's oversight of money market funds by enabling Commission staff to manage and analyze money market fund portfolio information more quickly and at a lower cost than is currently possible. The interactive data would also facilitate the flow of information between money market funds and other users of this information, such as information services, academics, and investors. As the development of software products to analyze the data continues to grow, we expect these benefits would increase.

Money market funds may also realize cost savings from the proposed rule. Currently, money market funds provide portfolio holdings information in a variety of formats to different third-parties, such as information services and NRSROs. The proposed rule may encourage the industry to adopt a standardized format, thereby reducing the burdens on money market funds of having to produce this information in multiple formats. In addition, money market funds may also benefit from cost savings to the extent that we exempt them from filing certain information required to be disclosed in existing quarterly portfolio holdings reports.

The proposed reporting requirement would also impose certain costs. We estimate that, for the purposes of the PRA, these filing requirements (including collecting, tagging, and electronically filing the report) would impose 128 burden hours at a cost of $35,968 [396] per money market fund for the first year, and 96 burden hours at a cost of $26,976 [397] per money market fund in subsequent years.[398]

For the reasons outlined in the discussion on the monthly website posting requirement, we estimate that there would be minimal additional costs incurred in connection with the proposed reporting requirement. We request comment on our estimates, including whether our assumptions about the costs and benefits are correct. We also request comment on other potential costs and benefits of the proposed reporting requirement.

[396] This estimate is based on the following calculation: $281/hour × 128 hours (senior database administrator) = $35,968.

[397] This estimate is based on the following calculation: $281/hour × 96 hours (senior database administrator) = $26,976.

[398] We understand that some money market funds may outsource all or a portion of these responsibilities to a filing agent, software consultant, or other third-party service provider. We believe, however, that a fund would engage third-party service providers only if the external costs were comparable, or less than, the estimated internal costs of compiling, tagging, and filing the Form N–MFP.

E. Request for Comments

The Commission requests comment on the potential costs and benefits of the proposed rules and rule amendments. We also request comment on the potential costs and benefits of any alternatives suggested by commenters. We encourage commenters to identify, discuss, analyze, and supply relevant data regarding any additional costs and benefits. For purposes of the Small Business Regulatory Enforcement Act of 1996,[399] the Commission also requests information regarding the potential annual effect of the proposals on the U.S. economy. Commenters are requested to provide empirical data to support their views.

VI. Competition, Efficiency and Capital Formation

Section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[400]

A. Rule 2a–7

1. Second Tier Securities, Portfolio Maturity, and Liquidity Limits

We are proposing several amendments to rule 2a–7 to tighten the risk-limiting conditions of the rule. We are proposing to limit money market fund investments to only first tier securities, *i.e.,* securities receiving the highest short-term ratings from the requisite NRSROs or unrated securities that the fund's board of directors or its delegate determines are of comparable quality.[401] We also are proposing to limit money market funds to acquiring long-term securities that have received long-term ratings in the highest two ratings categories.[402]

The proposed amendments would reduce the maximum weighted average maturity of a money market fund permitted by rule 2a–7 from 90 days to 60 days.[403] They also would impose a new maturity limitation based on the weighted average ''life'' of fund securities that would limit the portion of a fund's portfolio that could be held in longer term floating- or variable-rate securities.[404] We are proposing to delete a provision in rule 2a–7 that permits money market funds not relying on the amortized cost method of valuation to acquire Government securities with a remaining maturity of up to 762 calendar days.

Finally, we are proposing new liquidity requirements on money market funds. Under the proposed amendments, money market funds would be prohibited from acquiring illiquid securities[405] and money market funds would be required to comply with certain minimum daily and weekly liquidity requirements.[406] The amended rule also would require that a money market fund at all times hold highly liquid securities sufficient to meet reasonably foreseeable redemptions in light of its obligations under section 22(e) of the Act and any commitments the fund has made to shareholders.[407]

We believe that these changes would reduce money market funds' sensitivity to interest rate, credit, and liquidity risks. These changes also would limit the credit spread risk and interest rate spread risk produced by longer term securities. A reduction of these risks would better enable money market funds to weather market turbulence and maintain a stable net asset value per share. We believe that the changes would reduce the risk that a money market fund will break the buck and therefore prevent losses to fund investors. To the extent that money market funds are more stable, the changes also would reduce systemic risk to the capital markets and ensure a stable source of financing for issuers of short-term credit instruments. We believe that these effects would encourage capital formation by encouraging investment in money market funds, thereby allowing them to expand as a source of short-term financing in the capital markets.

These changes also may reduce maturities of short-term credit securities that issuers offer, which may increase financing costs for these issuers who might have to go back more frequently to the market for financing. To the extent that some issuers are unwilling or unable to issue securities that match money market fund demand given these proposed restrictions, the amendments could have a negative impact on capital formation.

If the proposed amendments reduce yields that money market funds are able to offer, some investors may move their money to, among other places, offshore unregulated money market funds that do not follow rule 2a–7's strictures and

[399] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

[400] 15 U.S.C. 80a–2(c).

[401] *See* proposed rule 2a–7(a)(11)(iii); proposed rule 2a–7(a)(11)(iv).

[402] *See* proposed rule 2a–7(a)(11)(iv)(A).

[403] *See* proposed rule 2a–7(c)(2)(ii).

[404] *See* proposed rule 2a–7(c)(2)(iii).

[405] *See* proposed rule 2a–7(c)(5)(i).

[406] *See* proposed rule 2a–7(c)(5).

[407] *See* proposed rule 2a–7(c)(5)(ii).

thus are able to offer a higher yield. Beyond the competitive impact, such a change could increase systemic risks to short-term credit markets and capital formation by increasing investment in less stable short-term instruments.

Precluding ownership of second tier securities also may have anticompetitive effects on some relatively small money market funds that may compete with larger funds on the basis of yield. The proposed elimination of the ability of money market funds to invest in second tier securities may affect the capital raising ability and strategies of the issuers of second tier securities or otherwise affect their financing arrangements, and may affect the flexibility of investing options for funds. As noted above, however, second tier securities represent only a very small percentage of money market fund portfolios today, which suggests that our proposed amendments would not have a material effect on capital formation. We solicit specific comment on whether the proposed amendments regarding second tier securities would promote efficiency, competition and capital formation.

2. Stress Testing

We are proposing to amend rule 2a–7 to require the board of directors of each money market fund to adopt procedures providing for periodic stress testing of the money market fund's portfolio, reporting the results of the testing to fund boards, and providing an assessment to the board.[408] We believe that stress testing could increase the efficiency of money market funds by enhancing their risk management and thus making it more likely that the fund will be better prepared for potential stress on the fund due to market events or shareholder behavior. Money market funds may become more stable as a result of the risk management benefits provided by stress testing, allowing them to expand and attract further investment. If so, this result will promote capital formation. We do not believe that stress testing would have an adverse impact on competition or capital formation. What effect would the proposed requirement have on competition, efficiency and capital formation?

3. Repurchase Agreements

We are proposing to allow money market funds to treat the acquisition of a repurchase agreement to be an acquisition of the collateral for purposes of rule 2a–7's diversification requirement only if the repurchase agreement is collateralized by cash items or Government securities[409] and after the board of directors or its delegate has evaluated the creditworthiness of the counterparty.[410]

We believe that these changes would limit money market funds' exposure to credit risk. The reduction of credit risk would increase money market funds' ability to maintain a stable net asset value per share, thereby preventing losses to fund investors, reducing systemic risk to the capital markets and ensuring a stable source of financing for issuers of short-term credit instruments. More stable money market funds may attract greater investments, thus promoting capital formation and providing a greater source of short-term financing in the capital markets.

The limitation on money market funds' ability to invest in repurchase agreements collateralized with securities other than cash items and Government securities may result in an increase in the short-term financing costs of the counterparties in such agreements, thereby reducing their willingness to invest in those securities. As a result, issuers of such securities could also be indirectly affected by our proposed change, which therefore could have a negative impact on capital formation. We request comment on what effect the proposed amendments would have on competition, efficiency, and capital formation.

4. Public Web Site Disclosure

We are proposing to require money market funds to disclose certain portfolio holdings information on their Web sites on a monthly basis.[411] The proposed rule amendment would provide greater transparency of the fund's investments for current and prospective shareholders, and may thus promote more efficient allocation of investments by investors. We believe the proposed rule amendment may also improve competition, as better-informed investors may prompt funds managers to provide better services and products. We do not anticipate that funds would be disadvantaged, with respect to competition, because so many already have chosen to provide the information more frequently than monthly. In addition, the investments selected by money market funds are less likely than, for example, equity funds, to be investments from which competing funds would obtain benefit by scrutinizing on a monthly basis. The proposed rule may also promote capital formation by making portfolio holdings information readily accessible to investors, who may thus be more inclined to allocate their investments in a particular fund or in money market funds instead of an alternative product. Alternatively, the proposed rule could have the reverse effect if the portfolio holdings information makes investors less confident regarding the risks associated with money market funds, including the risk that market participants may use the information obtained through the disclosures to the detriment of the fund and its investors, such as by trading along with the fund or ahead of the fund by anticipating future transactions based on past transactions. We request comment on what effect this proposed rule would have on competition, efficiency, and capital formation.

5. Processing of Transactions

We are proposing to require that each money market fund's board determine, at least once each calendar year, that the fund has the capability to redeem and sell its securities at prices other than the fund's stable net asset value per share.[412] This amendment would require money funds to have the operational capacity if they break the buck to continue to process investor transactions in an orderly manner. This amendment would increase efficiency at money market funds that break the buck by increasing the speed and minimizing the operational difficulties in satisfying shareholder redemption requests in such circumstances. It may also reduce investors' concerns that redemption would be unduly delayed if a money market fund were to break the buck. We do not believe that this amendment would have a material impact on competition or capital formation. We request comment on what effect this proposed amendment would have on competition, efficiency, and capital formation.

B. Rule 17a–9

The Commission is proposing to amend rule 17a–9 to expand the circumstances under which affiliated persons can purchase money market fund securities. Under the proposed amendments, a money market fund could sell a portfolio security that has defaulted (other than an immaterial default unrelated to the financial condition of the issuer) to an affiliated person for the greater of the security's amortized cost value or market value (plus accrued and unpaid interest), even though the security continued to be an

[408] Proposed rule 2a–7(c)(8)(ii)(D).

[409] Proposed rule 2a–7(a)(5).

[410] Proposed rule 2a–7(c)(4)(ii)(A).

[411] *See supra* Section II.F.1.

[412] Proposed rule 2a–7(c)(1).

eligible security.[413] In addition, the proposed amendment would permit affiliated persons, for any reason, to purchase other portfolio securities from an affiliated money market fund on the same terms provided that such person is required to promptly remit to the fund any profit it realizes from the later sale of the security.[414] These amendments would increase the efficiency of both the Commission and money market funds by allowing affiliated persons to purchase portfolio securities from money market funds under distress without having to seek no-action assurances from Commission staff. We do not believe that the proposed amendments will have any material impact on competition or capital formation. We request comment on our analysis. What effect would the proposed amendment to rule 17a–9 have on efficiency, competition and capital formation?

C. Rule 22e–3

Proposed rule 22e–3 would permit money market funds that break the buck to suspend redemptions and postpone the payment of proceeds pending board-approved liquidation proceedings. We anticipate that the rule would promote efficiency in the financial markets by facilitating orderly disposal of assets during liquidation. To the extent that investors choose money market funds over alternative investments because the proposed rule would provide reassurance as to the protection of their assets in the event the fund breaks the buck and minimize disruption in the financial markets, the rule also may promote capital formation. If, however, the possibility that redemptions can be suspended during a liquidation makes money market funds less appealing to investors, the rule may have a negative effect on capital formation. The proposed rule also could help make investors more confident that they would be able to receive the proceeds from their investment in the event of a liquidation of the fund. We do not believe that the proposed rule would have an adverse effect on competition. We request comment on what effect the proposed rule would have on competition, efficiency, and capital formation.

D. Rule 30b1–6 and Form N–MFP: Monthly Reporting of Portfolio Holdings

Proposed new rule 30b1–6 and Form N–MFP would mandate the monthly electronic filing of each money market fund's portfolio holdings information in XML-tagged format. As discussed above, we believe the new reporting requirement would improve the efficiency and effectiveness of the Commission's oversight of money market funds. The availability, and usability, of this data would also promote efficiency for other third-parties that may be interested in collecting and analyzing money market funds' portfolio holdings information. Money market funds currently are often required to provide this information to various third parties in different formats. To the extent that the proposal may encourage a standardized format for disclosure or transmission of portfolio holdings information, the proposal may promote efficiency for money market funds. We do not believe that the proposed rule would have an adverse effect on competition or capital formation. We request comment on what effect the proposed rule would have on competition, efficiency, and capital formation.

VII. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act of 1980[415] (''RFA'') requires the Commission to undertake an initial regulatory flexibility analysis (''IRFA'') of the proposed rule amendments on small entities unless the Commission certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[416] Pursuant to 5 U.S.C. section 605(b), the Commission hereby certifies that the proposed amendments to rules 2a–7, 17a–9, and 30b1–5, and proposed rules 30b1–6 and 22e–3 under the Investment Company Act, would not, if adopted, have a significant economic impact on a substantial number of small entities.

The proposal would amend rule 2a–7 under the Investment Company Act to:

(i) Limit money market fund investments to first tier securities (*i.e.,* securities that received the highest short-term ratings categories from the requisite NRSROs or unrated securities that the board of directors (or its delegate) determines are of comparable quality);

(ii) Limit money market funds to acquiring long-term securities that have received long-term ratings in the highest two ratings categories from the requisite NRSROs;

(iii) Reduce the maximum weighted average maturity of money market funds' portfolio securities from 90 to 60 days;

(iv) Require money market funds to maintain a maximum weighted average life to maturity of portfolio securities of no more than 120 days;

(v) Eliminate a provision of the rule that permits a fund that relies exclusively on the penny-rounding method of pricing to acquire Government securities with remaining maturities of up to 762 days, rather than the 397-day limit otherwise provided by the rule;

(vi) Prohibit money market funds from acquiring securities unless, at the time acquired, they are liquid, *i.e.,* can be sold or disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the money market fund;

(vii) Require that immediately after the acquisition of a security, a taxable ''retail fund'' hold no less than 5 percent of its total assets in cash, U.S. Treasury securities, or other securities (including repurchase agreements) that mature, or are subject to a demand feature exercisable in one business day, and (ii) an ''institutional fund'' hold no less than 10 percent of those instruments;

(viii) Require that immediately after the acquisition of a security (i) a ''retail fund'' holds no less than 15 percent of its total assets in cash, U.S. Treasury securities, or other securities (including repurchase agreements) that are convertible to cash within five business days, and (ii) an ''institutional fund'' holds no less than 30 percent of those instruments;

(ix) Require that a money market fund at all times hold cash, U.S. Treasury securities, or securities readily convertible to cash on a daily or weekly basis sufficient to meet reasonably foreseeable redemptions in light of its obligations under section 22(e) of the Act and any commitments the fund has made to shareholders;

(x) Require the board of directors of each money market fund to adopt procedures providing for periodic stress testing of the money market fund's ability to maintain a stable net asset value per share based on certain hypothetical events, a report of the testing results to the board, and an assessment by the fund's adviser of the fund's ability to withstand the events that are reasonably likely to occur within the following year;

(xi) Limit money market funds to investing in repurchase agreements collateralized by cash items or Government securities in order to obtain special treatment under the diversification provisions of rule 2a–7;

(xii) Require that the money market fund's board of directors or its delegate evaluate the creditworthiness of the

[413] *See* proposed rule 17a–9(a).

[414] *See* proposed rule 17a–9(b).

[415] 5 U.S.C. 603(a).

[416] 5 U.S.C. 605(b).

counterparty, regardless of whether the repurchase agreement is collateralized fully;

(xiii) Require money market funds to post monthly portfolio information on their Web sites; and

(xiv) Require that a money market fund's board determine, on an annual basis, that the fund (or its transfer agent) has the capacity to redeem and sell securities at prices that do not correspond to the fund's stable net asset value.

We also are proposing to amend rule 17a–9 to permit a money market fund to sell a portfolio security that has defaulted (other than an immaterial default unrelated to the financial condition of the issuer) to an affiliated person for the greater of the security's amortized cost value or market value (plus accrued and unpaid interest), even though the security continues to be an eligible security. In addition, we are proposing to permit an affiliated person, for any reason, to purchase any other portfolio security (*e.g.,* an eligible security that has not defaulted) from an affiliated money market fund for cash at the greater of the security's amortized cost value or market value, provided that such person promptly remits to the fund any profit it realizes from the later sale of the security. Under the proposal, a money market fund whose portfolio securities are purchased in reliance on rule 17a–9 would be required to provide notice of the transaction to the Commission by e-mail.

We are also proposing to amend rule 30b1–5 to exempt money market funds from the requirement to file their schedules of investments pursuant to Item 1 of Form N–Q, a quarterly schedule of portfolio holdings of management investment companies. The proposed amendment is intended to avoid unnecessarily duplicative disclosure obligations.

Finally, we are proposing two new rules. Proposed rule 22e–3 would exempt money market funds from section 22(e) to permit them to suspend redemptions in order to facilitate an orderly liquidation of fund assets. Rule 30b1–6 would mandate the monthly electronic filing in XML-tagged format of valuation and other information about the risk characteristics of the money market fund and each security in its portfolio.

Based on information in filings submitted to the Commission, we believe that there are no money market funds that are small entities.[417] For this reason, the Commission believes the proposed amendments to rules 2a–7, 17a–9, and 30b1–5, and proposed rules 22e–3 and 30b1–6 under the Investment Company Act would not, if adopted, have a significant economic impact on a substantial number of small entities.

We encourage written comments regarding this certification. The Commission solicits comment as to whether the proposed amendments to rules 2a–7, 17a–9, and 30b1–5, and proposed rules 22e–3 and 30b1–6 could have an effect on small entities that has not been considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

VIII. Statutory Authority

The Commission is proposing amendments to rule 2a–7 under the exemptive and rulemaking authority set forth in sections 6(c), 8(b), 22(c), and 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a–6(c), 80a–8(b), 80a–22(c), 80a–37(a)]. The Commission is proposing amendments to rule 17a–9 pursuant to the authority set forth in sections 6(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–37(a)]. The Commission is proposing rule 22e–3 pursuant to the authority set forth in sections 6(c), 22(e) and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–22(e), and 80a–37(a)]. The Commission is proposing amendments to rule 30b1–5 and new rule 30b1–6 and Form N–MFP pursuant to authority set forth in Sections 8(b), 30(b), 31(a), and 38(a) of the Investment Company Act [15 U.S.C. 80a–8(b), 80a–29(b), 80a–30(a), and 80a–37(a)].

List of Subjects in 17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules and Form

For reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

2. Section 270.2a–7 is revised to read as follows:

§ 270.2a–7 Money market funds.

(a) *Definitions.* (1) *Acquisition (or Acquire)* means any purchase or subsequent rollover (but does not include the failure to exercise a Demand Feature).

(2) *Amortized Cost Method* of valuation means the method of calculating an investment company's net asset value whereby portfolio securities are valued at the fund's Acquisition cost as adjusted for amortization of premium or accretion of discount rather than at their value based on current market factors.

(3) *Asset Backed Security* means a fixed income security (other than a Government security) issued by a Special Purpose Entity (as defined in this paragraph), substantially all of the assets which consist of Qualifying Assets (as defined in this paragraph). *Special Purpose Entity* means a trust, corporation, partnership or other entity organized for the sole purpose of issuing securities that entitle their holders to receive payments that depend primarily on the cash flow from Qualifying Assets, but does not include a registered investment company. *Qualifying Assets* means financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders.

(4) *Business Day* means any day, other than Saturday, Sunday, or any customary business holiday.

(5) *Collateralized Fully* means ''Collateralized Fully'' as defined in § 270.5b–3(c)(1) except that § 270.5b–3(c)(1)(iv)(C) and (D) shall not apply.

(6) *Conditional Demand Feature* means a Demand Feature that is not an Unconditional Demand Feature. A Conditional Demand Feature is not a Guarantee.

(7) *Conduit Security* means a security issued by a Municipal Issuer (as defined in this paragraph) involving an arrangement or agreement entered into, directly or indirectly, with a person other than a Municipal Issuer, which arrangement or agreement provides for or secures repayment of the security. *Municipal Issuer* means a state or territory of the United States (including the District of Columbia), or any political subdivision or public instrumentality of a state or territory of the United States. A Conduit Security does not include a security that is:

(i) Fully and unconditionally guaranteed by a Municipal Issuer;

[417] Under rule 0–10 under the Investment Company Act, an investment company is considered a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.

(ii) Payable from the general revenues of the Municipal Issuer or other Municipal Issuers (other than those revenues derived from an agreement or arrangement with a person who is not a Municipal Issuer that provides for or secures repayment of the security issued by the Municipal Issuer);

(iii) Related to a project owned and operated by a Municipal Issuer; or

(iv) Related to a facility leased to and under the control of an industrial or commercial enterprise that is part of a public project which, as a whole, is owned and under the control of a Municipal Issuer.

(8) *Daily Liquid Assets* means:

(i) Cash;

(ii) Direct obligations of the U.S. Government; or

(iii) Securities that will mature or are subject to a Demand Feature that is exercisable and payable within one Business Day.

(9) *Demand Feature* means:

(i) A feature permitting the holder of a security to sell the security at an exercise price equal to the approximate amortized cost of the security plus accrued interest, if any, at the time of exercise. A Demand Feature must be exercisable either:

(A) At any time on no more than 30 calendar days' notice;

(B) At specified intervals not exceeding 397 calendar days and upon no more than 30 calendar days' notice; or

(ii) A feature permitting the holder of an Asset Backed Security unconditionally to receive principal and interest within 397 calendar days of making demand.

(10) *Demand Feature Issued By A Non-Controlled Person* means a Demand Feature issued by:

(i) A person that, directly or indirectly, does not control, and is not controlled by or under common control with the issuer of the security subject to the Demand Feature (*control* means ''control'' as defined in section 2(a)(9) of the Act (15 U.S.C. 80a–2(a)(9)); or

(ii) A sponsor of a Special Purpose Entity with respect to an Asset Backed Security.

(11) *Eligible Security* means:

(i) A security issued by a registered investment company that is a money market fund;

(ii) A Government Security;

(iii) A Rated Security with a remaining maturity of 397 calendar days or less that has received a rating from the Requisite NRSROs in the highest short-term rating category (within which there may be sub-categories or gradations indicating relative standing); or

(iv) An Unrated Security that is of comparable quality to a security meeting the requirements for a Rated Security in paragraph (a)(11)(iii) of this section, as determined by the money market fund's board of directors; provided, however, that:

(A) A security that at the time of issuance had a remaining maturity of more than 397 calendar days but that has a remaining maturity of 397 calendar days or less and that is an Unrated Security is not an Eligible Security if the security has received a long-term rating from any NRSRO that is not within the NRSRO's two highest long-term ratings categories (within which there may be sub-categories or gradations indicating relative standing), unless the security has received a long-term rating from the Requisite NRSROs in one of the two highest rating categories;

(B) An Asset Backed Security (other than an Asset Backed Security substantially all of whose Qualifying Assets consist of obligations of one or more Municipal Issuers, as that term is defined in paragraph (a)(7) of this section) shall not be an Eligible Security unless it has received a rating from an NRSRO.

(v) In addition, in the case of a security that is subject to a Demand Feature or Guarantee:

(A) The Guarantee has received a rating from an NRSRO or the Guarantee is issued by a guarantor that has received a rating from an NRSRO with respect to a class of debt obligations (or any debt obligation within that class) that is comparable in priority and security to the Guarantee, unless:

(*1*) The Guarantee is issued by a person that, directly or indirectly, controls, is controlled by or is under common control with the issuer of the security subject to the Guarantee (other than a sponsor of a Special Purpose Entity with respect to an Asset Backed Security);

(*2*) The security subject to the Guarantee is a repurchase agreement that is Collateralized Fully; or

(*3*) The Guarantee is itself a Government Security; and

(B) The issuer of the Demand Feature or Guarantee, or another institution, has undertaken promptly to notify the holder of the security in the event the Demand Feature or Guarantee is substituted with another Demand Feature or Guarantee (if such substitution is permissible under the terms of the Demand Feature or Guarantee).

(12) *Event of Insolvency* means ''Event of Insolvency'' as defined in § 270.5b–3(c)(2).

(13) *Floating Rate Security* means a security the terms of which provide for the adjustment of its interest rate whenever a specified interest rate changes and that, at any time until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost.

(14) *Government Security* means any ''Government security'' as defined in section 2(a)(16) of the Act (15 U.S.C. 80a–2(a)(16)).

(15) *Guarantee* means an unconditional obligation of a person other than the issuer of the security to undertake to pay, upon presentment by the holder of the Guarantee (if required), the principal amount of the underlying security plus accrued interest when due or upon default, or, in the case of an Unconditional Demand Feature, an obligation that entitles the holder to receive upon exercise the approximate amortized cost of the underlying security or securities, plus accrued interest, if any. A Guarantee includes a letter of credit, financial guaranty (bond) insurance, and an Unconditional Demand Feature (other than an Unconditional Demand Feature provided by the issuer of the security).

(16) *Guarantee Issued By A Non-Controlled Person* means a Guarantee issued by:

(i) A person that, directly or indirectly, does not control, and is not controlled by or under common control with the issuer of the security subject to the Guarantee (control means ''control'' as defined in section 2(a)(9) of the Act (15 U.S.C. 80a–2(a)(9)); or

(ii) A sponsor of a Special Purpose Entity with respect to an Asset Backed Security.

(17) *Institutional Fund* means a money market fund whose board of directors determines, no less frequently than once each calendar year, is intended to be offered primarily to institutional investors or has the characteristics of such a fund, based on the:

(i) Nature of the record owners of the fund's shares;

(ii) Minimum initial investment requirements; and

(iii) Historical cash flows that have resulted or expected cash flows that would result from purchases and redemptions.

(18) *Liquid Security* means a security that can be sold or disposed of in the ordinary course of business within seven calendar days at approximately its amortized cost.

(19) *NRSRO* means any nationally recognized statistical rating organization, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(62)), that is not an ''affiliated person,'' as defined in section 2(a)(3)(C) of the Act (15 U.S.C. 80a–2(a)(3)(C)), of the issuer of, or any insurer or provider of credit support for, the security.

(20) *Penny-Rounding Method* of pricing means the method of computing an investment company's price per share for purposes of distribution, redemption and repurchase whereby the current net asset value per share is rounded to the nearest one percent.

(21) *Rated Security* means a security that meets the requirements of paragraphs (a)(21)(i) or (ii) of this section, in each case subject to paragraph (a)(21)(iii) of this section:

(i) The security has received a short-term rating from an NRSRO, or has been issued by an issuer that has received a short-term rating from an NRSRO with respect to a class of debt obligations (or any debt obligation within that class) that is comparable in priority and security with the security; or

(ii) The security is subject to a Guarantee that has received a short-term rating from an NRSRO, or a Guarantee issued by a guarantor that has received a short-term rating from an NRSRO with respect to a class of debt obligations (or any debt obligation within that class) that is comparable in priority and security with the Guarantee; but

(iii) A security is not a Rated Security if it is subject to an external credit support agreement (including an arrangement by which the security has become a Refunded Security) that was not in effect when the security was assigned its rating, unless the security has received a short-term rating reflecting the existence of the credit support agreement as provided in paragraph (a)(21)(i) of this section, or the credit support agreement with respect to the security has received a short-term rating as provided in paragraph (a)(21)(ii) of this section.

(22) *Refunded Security* means ''Refunded Security'' as defined in § 270.5b–3(c)(4).

(23) *Requisite NRSROs* means:

(i) Any two NRSROs that have issued a rating with respect to a security or class of debt obligations of an issuer; or

(ii) If only one NRSRO has issued a rating with respect to such security or class of debt obligations of an issuer at the time the fund acquires the security, that NRSRO.

(24) *Retail Fund* means any money market fund that the board of directors has not determined within the calendar year is an Institutional Fund under paragraph (c)(5)(v) of this section.

(25) *Single State Fund* means a Tax Exempt Fund that holds itself out as seeking to maximize the amount of its distributed income that is exempt from the income taxes or other taxes on investments of a particular state and, where applicable, subdivisions thereof.

(26) *Tax Exempt Fund* means any money market fund that holds itself out as distributing income exempt from regular federal income tax.

(27) *Total Assets* means, with respect to a money market fund using the Amortized Cost Method, the total amortized cost of its assets and, with respect to any other money market fund, the total market-based value of its assets.

(28) *Unconditional Demand Feature* means a Demand Feature that by its terms would be readily exercisable in the event of a default in payment of principal or interest on the underlying security or securities.

(29) *United States Dollar-Denominated* means, with reference to a security, that all principal and interest payments on such security are payable to security holders in United States dollars under all circumstances and that the interest rate of, the principal amount to be repaid, and the timing of payments related to such security do not vary or float with the value of a foreign currency, the rate of interest payable on foreign currency borrowings, or with any other interest rate or index expressed in a currency other than United States dollars.

(30) *Unrated Security* means a security that is not a Rated Security.

(31) *Variable Rate Security* means a security the terms of which provide for the adjustment of its interest rate on set dates (such as the last day of a month or calendar quarter) and that, upon each adjustment until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost.

(32) *Weekly Liquid Assets* means:

(i) Cash;

(ii) Direct obligations of the U.S. Government; or

(iii) Securities that will mature or are subject to a Demand Feature that is exercisable and payable within five Business Days.

(b) *Holding Out and Use of Names and Titles.* (1) It shall be an untrue statement of material fact within the meaning of section 34(b) of the Act (15 U.S.C. 80a–33(b)) for a registered investment company, in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Act, including any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors that is required to be filed with the Commission by section 24(b) of the Act (15 U.S.C. 80a–24(b)), to hold itself out to investors as a money market fund or the equivalent of a money market fund, unless such registered investment company meets the conditions of paragraphs (c)(2), (c)(3), (c)(4) and (c)(5) of this section.

(2) It shall constitute the use of a materially deceptive or misleading name or title within the meaning of section 35(d) of the Act (15 U.S.C. 80a–34(d)) for a registered investment company to adopt the term ''money market'' as part of its name or title or the name or title of any redeemable securities of which it is the issuer, or to adopt a name that suggests that it is a money market fund or the equivalent of a money market fund, unless such registered investment company meets the conditions of paragraphs (c)(2), (c)(3), (c)(4), and (c)(5) of this section.

(3) For purposes of this paragraph, a name that suggests that a registered investment company is a money market fund or the equivalent thereof shall include one that uses such terms as ''cash,'' ''liquid,'' ''money,'' ''ready assets'' or similar terms.

(c) *Share Price Calculations.* The current price per share, for purposes of distribution, redemption and repurchase, of any redeemable security issued by any registered investment company (''money market fund'' or ''fund''), notwithstanding the requirements of section 2(a)(41) of the Act (15 U.S.C. 80a–2(a)(41)) and of §§ 270.2a–4 and 270.22c–1 thereunder, may be computed by use of the Amortized Cost Method or the Penny-Rounding Method; provided, however, that:

(1) *Board Findings.* The board of directors of the money market fund shall determine, in good faith, that it is in the best interests of the fund and its shareholders to maintain a stable net asset value per share or stable price per share, by virtue of either the Amortized Cost Method or the Penny-Rounding Method, and that the money market fund will continue to use such method only so long as the board of directors believes that it fairly reflects the market-based net asset value per share. The board shall annually determine in good faith that the fund (or its transfer agent) has the capacity to redeem and sell securities issued by the fund at a price

based on the current net asset value per share pursuant to § 270.22c–1. Such capacity shall include the ability to redeem and sell securities at prices that do not correspond to a stable net asset value or price per share.

(2) *Portfolio Maturity.* The money market fund shall maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share or price per share; provided, however, that the money market fund will not:

(i) Acquire any instrument with a remaining maturity of greater than 397 calendar days;

(ii) Maintain a dollar-weighted average portfolio maturity that exceeds 60 calendar days; or

(iii) Maintain a dollar-weighted average portfolio maturity that exceeds 120 calendar days, determined without reference to the exceptions in paragraph (d) of this section regarding interest rate readjustments.

(3) *Portfolio Quality.* (i) *General.* The money market fund shall limit its portfolio investments to those United States Dollar-Denominated securities that the fund's board of directors determines present minimal credit risks (which determination must be based on factors pertaining to credit quality in addition to any rating assigned to such securities by an NRSRO) and that are at the time of Acquisition Eligible Securities.

(ii) *Securities Subject to Guarantees.* A security that is subject to a Guarantee may be determined to be an Eligible Security based solely on whether the Guarantee is an Eligible Security.

(iii) *Securities Subject to Conditional Demand Features.* A security that is subject to a Conditional Demand Feature (''Underlying Security'') may be determined to be an Eligible Security only if:

(A) The Conditional Demand Feature is an Eligible Security;

(B) At the time of the Acquisition of the Underlying Security, the money market fund's board of directors has determined that there is minimal risk that the circumstances that would result in the Conditional Demand Feature not being exercisable will occur; and

(*1*) The conditions limiting exercise either can be monitored readily by the fund, or relate to the taxability, under federal, state or local law, of the interest payments on the security; or

(*2*) The terms of the Conditional Demand Feature require that the fund will receive notice of the occurrence of the condition and the opportunity to exercise the Demand Feature in accordance with its terms; and

(C) The Underlying Security or any Guarantee of such security (or the debt securities of the issuer of the Underlying Security or Guarantee that are comparable in priority and security with the Underlying Security or Guarantee) has received either a short-term rating or a long-term rating, as the case may be, from the Requisite NRSROs within the NRSROs' highest short-term or long-term rating categories (within which there may be sub-categories or gradations indicating relative standing) or, if unrated, is determined to be of comparable quality by the money market fund's board of directors to a security that has received a rating from the Requisite NRSROs within the NRSROs' highest short-term or long-term rating categories, as the case may be.

(4) *Portfolio Diversification.* (i) *Issuer Diversification.* The money market fund shall be diversified with respect to issuers of securities Acquired by the fund as provided in paragraphs (c)(4)(i) and (c)(4)(ii) of this section, other than with respect to Government Securities and securities subject to a Guarantee Issued By A Non-Controlled Person.

(A) *Taxable and National Funds.* Immediately after the Acquisition of any security, a money market fund other than a Single State Fund shall not have invested more than five percent of its Total Assets in securities issued by the issuer of the security; provided, however, that such a fund may invest up to twenty-five percent of its Total Assets in the securities of a single issuer for a period of up to three Business Days after the Acquisition thereof; Provided, further, that the fund may not invest in the securities of more than one issuer in accordance with the foregoing proviso in this paragraph at any time.

(B) *Single State Funds.* With respect to seventy-five percent of its Total Assets, immediately after the Acquisition of any security, a Single State Fund shall not have invested more than five percent of its Total Assets in securities issued by the issuer of the security.

(ii) *Issuer Diversification Calculations.* For purposes of making calculations under paragraph (c)(4)(i) of this section:

(A) *Repurchase Agreements.* The Acquisition of a repurchase agreement may be deemed to be an Acquisition of the underlying securities, provided the obligation of the seller to repurchase the securities from the money market fund is Collateralized Fully and the fund's board of directors has evaluated the seller's creditworthiness.

(B) *Refunded Securities.* The Acquisition of a Refunded Security shall be deemed to be an Acquisition of the escrowed Government Securities.

(C) *Conduit Securities.* A Conduit Security shall be deemed to be issued by the person (other than the Municipal Issuer) ultimately responsible for payments of interest and principal on the security.

(D) *Asset Backed Securities.* (*1*) *General.* An Asset Backed Security Acquired by a fund (''Primary ABS'') shall be deemed to be issued by the Special Purpose Entity that issued the Asset Backed Security; provided, however:

(*i*) Holdings of Primary ABS. Any person whose obligations constitute ten percent or more of the principal amount of the Qualifying Assets of the Primary ABS (''Ten Percent Obligor'') shall be deemed to be an issuer of the portion of the Primary ABS such obligations represent; and

(*ii*) Holdings of Secondary ABS. If a Ten Percent Obligor of a Primary ABS is itself a Special Purpose Entity issuing Asset Backed Securities (''Secondary ABS''), any Ten Percent Obligor of such Secondary ABS also shall be deemed to be an issuer of the portion of the Primary ABS that such Ten Percent Obligor represents.

(*2*) *Restricted Special Purpose Entities.* A Ten Percent Obligor with respect to a Primary or Secondary ABS shall not be deemed to have issued any portion of the assets of a Primary ABS as provided in paragraph (c)(4)(ii)(D)(1) of this section if that Ten Percent Obligor is itself a Special Purpose Entity issuing Asset Backed Securities (''Restricted Special Purpose Entity''), and the securities that it issues (other than securities issued to a company that controls, or is controlled by or under common control with, the Restricted Special Purpose Entity and which is not itself a Special Purpose Entity issuing Asset Backed Securities) are held by only one other Special Purpose Entity.

(*3*) *Demand Features and Guarantees.* In the case of a Ten Percent Obligor deemed to be an issuer, the fund shall satisfy the diversification requirements of paragraph (c)(4)(iii) of this section with respect to any Demand Feature or Guarantee to which the Ten Percent Obligor's obligations are subject.

(E) *Shares of Other Money Market Funds.* A money market fund that Acquires shares issued by another money market fund in an amount that would otherwise be prohibited by paragraph (c)(4)(i) of this section shall nonetheless be deemed in compliance with this section if the board of directors of the Acquiring money market fund reasonably believes that the fund

in which it has invested is in compliance with this section.

(iii) *Diversification Rules for Demand Features and Guarantees.* The money market fund shall be diversified with respect to Demand Features and Guarantees Acquired by the fund as provided in paragraphs (c)(4)(iii) and (c)(4)(iv) of this section, other than with respect to a Demand Feature issued by the same institution that issued the underlying security, or with respect to a Guarantee or Demand Feature that is itself a Government Security.

(A) *General.* Immediately after the Acquisition of any Demand Feature or Guarantee or security subject to a Demand Feature or Guarantee, a money market fund, with respect to seventy-five percent of its Total Assets, shall not have invested more than ten percent of its Total Assets in securities issued by or subject to Demand Features or Guarantees from the institution that issued the Demand Feature or Guarantee, subject to paragraph (c)(4)(iii)(B) of this section.

(B) *Demand Features or Guarantees Issued by Non-Controlled Persons.* Immediately after the Acquisition of any security subject to a Demand Feature or Guarantee, a money market fund shall not have invested more than ten percent of its Total Assets in securities issued by, or subject to Demand Features or Guarantees from the institution that issued the Demand Feature or Guarantee, unless, with respect to any security subject to Demand Features or Guarantees from that institution (other than securities issued by such institution), the Demand Feature or Guarantee is a Demand Feature or Guarantee Issued By A Non-Controlled Person.

(iv) *Demand Feature and Guarantee Diversification Calculations.* (A) *Fractional Demand Features or Guarantees.* In the case of a security subject to a Demand Feature or Guarantee from an institution by which the institution guarantees a specified portion of the value of the security, the institution shall be deemed to guarantee the specified portion thereof.

(B) *Layered Demand Features or Guarantees.* In the case of a security subject to Demand Features or Guarantees from multiple institutions that have not limited the extent of their obligations as described in paragraph (c)(4)(iv)(A) of this section, each institution shall be deemed to have provided the Demand Feature or Guarantee with respect to the entire principal amount of the security.

(v) *Diversification Safe Harbor.* A money market fund that satisfies the applicable diversification requirements of paragraphs (c)(4) and (c)(6) of this section shall be deemed to have satisfied the diversification requirements of section 5(b)(1) of the Act (15 U.S.C. 80a–5(b)(1)) and the rules adopted thereunder.

(5) *Portfolio Liquidity.* (i) *Liquid Securities.* The money market fund shall limit its portfolio investments to cash and securities that at the time of Acquisition are Liquid Securities.

(ii) *General Liquidity Requirement.* The money market fund shall hold Daily Liquid Assets and Weekly Liquid Assets sufficient to meet reasonably foreseeable shareholder redemptions in light of the fund's obligations under section 22(e) of the Act (15 U.S.C. 80a–22(e)) and any commitments the fund has made to shareholders.

(iii) *Minimum Daily Liquidity Requirement.* A money market fund shall not Acquire any security other than a Daily Liquid Asset if, immediately after the Acquisition, a Retail Fund would have invested less than five percent of its Total Assets, and an Institutional Fund would have invested less than ten percent of its Total Assets, in Daily Liquid Assets. This provision shall not apply to Tax Exempt Funds.

(iv) *Minimum Weekly Liquidity Requirement.* A money market fund shall not Acquire any security if, immediately after the Acquisition, a Retail Fund would have invested less than fifteen percent of its Total Assets, and an Institutional Fund would have invested less than thirty percent of its Total Assets, in Weekly Liquid Assets.

(v) *Annual Board Determination.* The board of directors of each money market fund shall determine no less than once each calendar year whether the fund is an Institutional Fund for purposes of meeting the minimum liquidity requirements set forth in paragraphs (c)(5)(iii) and (iv) of this section.

(6) *Demand Features and Guarantees Not Relied Upon.* If the fund's board of directors has determined that the fund is not relying on a Demand Feature or Guarantee to determine the quality (pursuant to paragraph (c)(3) of this section), or maturity (pursuant to paragraph (d) of this section), or liquidity of a portfolio security, and maintains a record of this determination (pursuant to paragraphs (c)(10)(ii) and (c)(11)(vi) of this section), then the fund may disregard such Demand Feature or Guarantee for all purposes of this section.

(7) *Downgrades, Defaults and Other Events.* (i) *Downgrades.* (A) *General.* In the event that the money market fund's investment adviser (or any person to whom the fund's board of directors has delegated portfolio management responsibilities) becomes aware that any Unrated Security held by the money market fund has, since the security was Acquired by the fund, been given a rating by any NRSRO below the NRSRO's highest short-term rating category, the board of directors of the money market fund shall reassess promptly whether such security continues to present minimal credit risks and shall cause the fund to take such action as the board of directors determines is in the best interests of the money market fund and its shareholders.

(B) The reassessment required by paragraph (c)(7)(i)(A) of this section shall not be required if the fund disposes of the security (or it matures) within five Business Days.

(ii) *Defaults and Other Events.* Upon the occurrence of any of the events specified in paragraphs (c)(7)(ii)(A) through (D) of this section with respect to a portfolio security, the money market fund shall dispose of such security as soon as practicable consistent with achieving an orderly disposition of the security, by sale, exercise of any Demand Feature or otherwise, absent a finding by the board of directors that disposal of the portfolio security would not be in the best interests of the money market fund (which determination may take into account, among other factors, market conditions that could affect the orderly disposition of the portfolio security):

(A) The default with respect to a portfolio security (other than an immaterial default unrelated to the financial condition of the issuer);

(B) A portfolio security ceases to be an Eligible Security;

(C) A portfolio security has been determined to no longer present minimal credit risks; or

(D) An Event of Insolvency occurs with respect to the issuer of a portfolio security or the provider of any Demand Feature or Guarantee.

(iii) *Notice to the Commission.* The money market fund shall promptly notify the Commission by electronic mail directed to the Director of Investment Management or the Director's designee, of any:

(A) Default with respect to one or more portfolio securities (other than an immaterial default unrelated to the financial condition of the issuer) or an Event of Insolvency with respect to the issuer of the security or any Demand Feature or Guarantee to which it is subject, where immediately before default the securities (or the securities subject to the Demand Feature or Guarantee) accounted for ½ of 1 percent

or more of a money market fund's Total Assets, the money market fund shall promptly notify the Commission of such fact and the actions the money market fund intends to take in response to such situation; or

(B) Purchase of a security from the fund by an affiliated person in reliance on § 270.17a–9 of this section, and the reasons for such purchase.

(iv) *Defaults for Purposes of Paragraphs (c)(7)(ii) and (iii).* For purposes of paragraphs (c)(7)(ii) and (iii) of this section, an instrument subject to a Demand Feature or Guarantee shall not be deemed to be in default (and an Event of Insolvency with respect to the security shall not be deemed to have occurred) if:

(A) In the case of an instrument subject to a Demand Feature, the Demand Feature has been exercised and the fund has recovered either the principal amount or the amortized cost of the instrument, plus accrued interest; or

(B) The provider of the Guarantee is continuing, without protest, to make payments as due on the instrument.

(8) *Required Procedures: Amortized Cost Method.* In the case of a money market fund using the Amortized Cost Method:

(i) *General.* In supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market fund's investment adviser, the money market fund's board of directors, as a particular responsibility within the overall duty of care owed to its shareholders, shall establish written procedures reasonably designed, taking into account current market conditions and the money market fund's investment objectives, to stabilize the money market fund's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at a single value.

(ii) *Specific Procedures.* Included within the procedures adopted by the board of directors shall be the following:

(A) *Shadow Pricing.* Written procedures shall provide:

(*1*) That the extent of deviation, if any, of the current net asset value per share calculated using available market quotations (or an appropriate substitute that reflects current market conditions) from the money market fund's amortized cost price per share, shall be calculated at such intervals as the board of directors determines appropriate and reasonable in light of current market conditions;

(*2*) For the periodic review by the board of directors of the amount of the deviation as well as the methods used to calculate the deviation; and

(*3*) For the maintenance of records of the determination of deviation and the board's review thereof.

(B) *Prompt Consideration of Deviation.* In the event such deviation from the money market fund's amortized cost price per share exceeds ½ of 1 percent, the board of directors shall promptly consider what action, if any, should be initiated by the board of directors.

(C) *Material Dilution or Unfair Results.* Where the board of directors believes the extent of any deviation from the money market fund's amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall cause the fund to take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair results.

(D) *Stress Testing.* Written procedures shall provide for:

(*1*) The periodic testing, at such intervals as the board of directors determines appropriate and reasonable in light of current market conditions, of the money market fund's ability to maintain a stable net asset value per share based upon specified hypothetical events, that include, but are not limited to, a change in short-term interest rates, an increase in shareholder redemptions, a downgrade of or default on portfolio securities, and the widening or narrowing of spreads between yields on an appropriate benchmark the fund has selected for overnight interest rates and commercial paper and other types of securities held by the fund;

(*2*) A report on the results of such testing to be provided to the board of directors at its next regularly scheduled meeting, which report shall include the date(s) on which the testing was performed and the magnitude of each hypothetical event that would cause the deviation of the money market fund's net asset value calculated using available market quotations (or appropriate substitutes which reflect current market conditions) from its net asset value per share calculated using amortized cost to exceed ½ of 1 percent; and

(*3*) An assessment by the fund's adviser of the fund's ability to withstand the events (and concurrent occurrences of those events) that are reasonably likely to occur within the following year.

(9) *Required Procedures: Penny-Rounding Method.* In the case of a money market fund using the Penny-Rounding Method, in supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market fund's investment adviser, the money market fund's board of directors undertakes, as a particular responsibility within the overall duty of care owed to its shareholders, to assure to the extent reasonably practicable, taking into account current market conditions affecting the money market fund's investment objectives, that the money market fund's price per share as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one percent, will not deviate from the single price established by the board of directors.

(10) *Specific Procedures: Amortized Cost and Penny-Rounding Methods.* Included within the procedures adopted by the board of directors for money market funds using either the Amortized Cost or Penny-Rounding Methods shall be the following:

(i) *Securities for Which Maturity Is Determined by Reference to Demand Features.* In the case of a security for which maturity is determined by reference to a Demand Feature, written procedures shall require ongoing review of the security's continued minimal credit risks, and that review must be based on, among other things, financial data for the most recent fiscal year of the issuer of the Demand Feature and, in the case of a security subject to a Conditional Demand Feature, the issuer of the security whose financial condition must be monitored under paragraph (c)(3)(iv) of this section, whether such data is publicly available or provided under the terms of the security's governing documentation.

(ii) *Securities Subject to Demand Features or Guarantees.* In the case of a security subject to one or more Demand Features or Guarantees that the fund's board of directors has determined that the fund is not relying on to determine the quality (pursuant to paragraph (c)(3) of this section), maturity (pursuant to paragraph (d) of this section) or liquidity of the security subject to the Demand Feature or Guarantee, written procedures shall require periodic evaluation of such determination.

(iii) *Adjustable Rate Securities Without Demand Features.* In the case of a Variable Rate or Floating Rate Security that is not subject to a Demand Feature and for which maturity is determined pursuant to paragraphs (d)(1), (d)(2) or (d)(4) of this section, written procedures shall require periodic review of whether the interest rate formula, upon readjustment of its interest rate, can reasonably be expected to cause the

security to have a market value that approximates its amortized cost value.

(iv) *Asset Backed Securities.* In the case of an Asset Backed Security, written procedures shall require the fund to periodically determine the number of Ten Percent Obligors (as that term is used in paragraph (c)(4)(ii)(D) of this section) deemed to be the issuers of all or a portion of the Asset Backed Security for purposes of paragraph (c)(4)(ii)(D) of this section; Provided, however, written procedures need not require periodic determinations with respect to any Asset Backed Security that a fund's board of directors has determined, at the time of Acquisition, will not have, or is unlikely to have, Ten Percent Obligors that are deemed to be issuers of all or a portion of that Asset Backed Security for purposes of paragraph (c)(4)(ii)(D) of this section, and maintains a record of this determination.

(11) *Record Keeping and Reporting.* (i) *Written Procedures.* For a period of not less than six years following the replacement of such procedures with new procedures (the first two years in an easily accessible place), a written copy of the procedures (and any modifications thereto) described in paragraphs (c)(7) through (c)(10) and (e) of this section shall be maintained and preserved.

(ii) *Board Considerations and Actions.* For a period of not less than six years (the first two years in an easily accessible place) a written record shall be maintained and preserved of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth in this section, to be included in the minutes of the board of directors' meetings.

(iii) *Credit Risk Analysis.* For a period of not less than three years from the date that the credit risks of a portfolio security were most recently reviewed, a written record of the determination that a portfolio security presents minimal credit risks and the NRSRO ratings (if any) used to determine the status of the security as an Eligible Security shall be maintained and preserved in an easily accessible place.

(iv) *Determinations With Respect to Adjustable Rate Securities.* For a period of not less than three years from the date when the determination was most recently made, a written record shall be preserved and maintained, in an easily accessible place, of the determination required by paragraph (c)(10)(iii) of this section (that a Variable Rate or Floating Rate Security that is not subject to a Demand Feature and for which maturity is determined pursuant to paragraphs (d)(1), (d)(2) or (d)(4) of this section can reasonably be expected, upon readjustment of its interest rate at all times during the life of the instrument, to have a market value that approximates its amortized cost).

(v) *Determinations with Respect to Asset Backed Securities.* For a period of not less than three years from the date when the determination was most recently made, a written record shall be preserved and maintained, in an easily accessible place, of the determinations required by paragraph (c)(10)(iv) of this section (the number of Ten Percent Obligors (as that term is used in paragraph (c)(4)(ii)(D) of this section) deemed to be the issuers of all or a portion of the Asset Backed Security for purposes of paragraph (c)(4)(ii)(D) of this section). The written record shall include:

(A) The identities of the Ten Percent Obligors (as that term is used in paragraph (c)(4)(ii)(D) of this section), the percentage of the Qualifying Assets constituted by the securities of each Ten Percent Obligor and the percentage of the fund's Total Assets that are invested in securities of each Ten Percent Obligor; and

(B) Any determination that an Asset Backed Security will not have, or is unlikely to have, Ten Percent Obligors deemed to be issuers of all or a portion of that Asset Backed Security for purposes of paragraph (c)(4)(ii)(D) of this section.

(vi) *Evaluations With Respect to Securities Subject to Demand Features or Guarantees.* For a period of not less than three years from the date when the evaluation was most recently made, a written record shall be preserved and maintained, in an easily accessible place, of the evaluation required by paragraph (c)(10)(ii) (regarding securities subject to one or more Demand Features or Guarantees) of this section.

(vii) *Reports and Assessments with Respect to Stress Testing.* For a period of not less than six years (the first two years in an easily accessible place), a written copy of the report required under paragraph (c)(8)(ii)(D)(2) of this section and a written record of the assessment required under paragraph (c)(8)(ii)(D)(3) of this section shall be maintained and preserved.

(viii) *Inspection of Records.* The documents preserved pursuant to this paragraph (c)(11) shall be subject to inspection by the Commission in accordance with section 31(b) of the Act (15 U.S.C. 80a–30(b)) as if such documents were records required to be maintained pursuant to rules adopted under section 31(a) of the Act (15 U.S.C. 80a–30(a)). If any action was taken under paragraphs (c)(7)(ii) (with respect to defaulted securities and events of insolvency) or (c)(8)(ii) (with respect to a deviation from the fund's share price of more than ½ of 1 percent) of this section, the money market fund will file an exhibit to the Form N–SAR (17 CFR 274.101) filed for the period in which the action was taken describing with specificity the nature and circumstances of such action. The money market fund will report in an exhibit to such Form any securities it holds on the final day of the reporting period that are not Eligible Securities.

(12) *Public Disclosure of Valuations.* The money market fund shall post on its Web site, for a period of not less than twelve months, beginning no later than the second business day of the month, the fund's schedule of investments, as prescribed by rules 12–12 through 12–14 of Regulation S–X [17 CFR 210.12.–12 through 210.12–14], as of the last business day of the prior month.

(d) *Maturity of Portfolio Securities.* For purposes of this section, the maturity of a portfolio security shall be deemed to be the period remaining (calculated from the trade date or such other date on which the fund's interest in the security is subject to market action) until the date on which, in accordance with the terms of the security, the principal amount must unconditionally be paid, or in the case of a security called for redemption, the date on which the redemption payment must be made, except as provided in paragraphs (d)(1) through (d)(8) of this section:

(1) *Adjustable Rate Government Securities.* A Government Security that is a Variable Rate Security where the variable rate of interest is readjusted no less frequently than every 397 calendar days shall be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate. A Government Security that is a Floating Rate Security shall be deemed to have a remaining maturity of one day.

(2) *Short-Term Variable Rate Securities.* A Variable Rate Security, the principal amount of which, in accordance with the terms of the security, must unconditionally be paid in 397 calendar days or less shall be deemed to have a maturity equal to the earlier of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand.

(3) *Long-Term Variable Rate Securities.* A Variable Rate Security, the principal amount of which is scheduled to be paid in more than 397 calendar

days, that is subject to a Demand Feature, shall be deemed to have a maturity equal to the longer of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand.

(4) *Short-Term Floating Rate Securities.* A Floating Rate Security, the principal amount of which, in accordance with the terms of the security, must unconditionally be paid in 397 calendar days or less shall be deemed to have a maturity of one day.

(5) *Long-Term Floating Rate Securities.* A Floating Rate Security, the principal amount of which is scheduled to be paid in more than 397 calendar days, that is subject to a Demand Feature, shall be deemed to have a maturity equal to the period remaining until the principal amount can be recovered through demand.

(6) *Repurchase Agreements.* A repurchase agreement shall be deemed to have a maturity equal to the period remaining until the date on which the repurchase of the underlying securities is scheduled to occur, or, where the agreement is subject to demand, the notice period applicable to a demand for the repurchase of the securities.

(7) *Portfolio Lending Agreements.* A portfolio lending agreement shall be treated as having a maturity equal to the period remaining until the date on which the loaned securities are scheduled to be returned, or where the agreement is subject to demand, the notice period applicable to a demand for the return of the loaned securities.

(8) *Money Market Fund Securities.* An investment in a money market fund shall be treated as having a maturity equal to the period of time within which the Acquired money market fund is required to make payment upon redemption, unless the Acquired money market fund has agreed in writing to provide redemption proceeds to the investing money market fund within a shorter time period, in which case the maturity of such investment shall be deemed to be the shorter period.

(e) *Delegation.* The money market fund's board of directors may delegate to the fund's investment adviser or officers the responsibility to make any determination required to be made by the board of directors under this section (other than the determinations required by paragraphs (c)(1) (board findings); (c)(7)(ii) (defaults and other events); (c)(8)(i) (general required procedures: Amortized Cost Method); (c)(8)(ii)(A) (shadow pricing), (B) (prompt consideration of deviation), and (C) (material dilution or unfair results); and (c)(9) (required procedures: Penny-Rounding Method) of this section) provided:

(1) *Written Guidelines.* The Board shall establish and periodically review written guidelines (including guidelines for determining whether securities present minimal credit risks as required in paragraph (c)(3) of this section) and procedures under which the delegate makes such determinations:

(2) *Oversight.* The Board shall take any measures reasonably necessary (through periodic reviews of fund investments and the delegate's procedures in connection with investment decisions and prompt review of the adviser's actions in the event of the default of a security or Event of Insolvency with respect to the issuer of the security or any Guarantee to which it is subject that requires notification of the Commission under paragraph (c)(7)(iii) of this section) to assure that the guidelines and procedures are being followed.

3. Section 270.17a–9 is revised to read as follows:

§ 270.17a–9 Purchase of certain securities from a money market fund by an affiliate, or an affiliate of an affiliate.

The purchase of a security from the portfolio of an open-end investment company holding itself out as a money market fund by any affiliated person or promoter of or principal underwriter for the money market fund or any affiliated person of such person shall be exempt from Section 17(a) of the Act (15 U.S.C. 80a–17(a)); provided that:

(a) In the case of a portfolio security that has ceased to be an Eligible Security (as defined in § 270.2a–7 (a)(11), or has defaulted (other than an immaterial default unrelated to the financial condition of the issuer):

(1) The purchase price is paid in cash; and

(2) The purchase price is equal to the greater of the amortized cost of the security or its market price (in each case, including accrued interest).

(b) In the case of any other portfolio security:

(1) The purchase price meets the requirements of paragraphs (a)(1) and (2) of this section; and

(2) In the event that the purchaser thereafter sells the security for a higher price than the purchase price paid to the money market fund, the purchaser shall promptly pay to the fund the amount by which the subsequent sale price exceeds the purchase price paid to the fund.

4. Section 270.22e–3 is added to read as follows:

§ 270.22e–3 Exemption for liquidation of money market funds.

(a) A registered open-end management investment company or series thereof (''fund'') that is regulated as a money market fund under § 270.2a–7 is exempt from the requirements of section 22(e) of the Act (15 U.S.C. 80a–22(e)) if:

(1) The fund's current price per share calculated pursuant to § 270.2a–7(c) is less than the fund's stable net asset value or price per share;

(2) The fund's board of directors, including a majority of directors who are not interested persons of the fund, has approved the liquidation of the fund; and

(3) The fund, prior to suspending redemptions, notifies the Commission of its decision to liquidate and suspend redemptions, by electronic mail directed to the attention of the Director of the Division of Investment Management or his designee.

(b) Any fund that owns, pursuant to section 12(d)(1)(E) of the Act (15 U.S.C. 80a–12(d)(1)(E)), shares of a money market fund that has suspended redemptions of shares pursuant to paragraph (a) of this section also is exempt from the requirements of section 22(e) of the Act. A fund relying on the exemption provided in this paragraph must promptly notify the Commission that it has suspended redemptions in reliance on this section. Notification under this paragraph shall be made by electronic mail directed to the attention of the Director of the Division of Investment Management or his designee.

(c) For the protection of fund shareholders, the Commission may issue an order to rescind or modify the exemption provided by this section as to that fund, after appropriate notice and opportunity for hearing in accordance with section 40 of the Act (15 U.S.C. 80a–39).

5. Section 270.30b1–5 is revised to read as follows:

§ 270.30b1–5 Quarterly report.

Every registered management investment company, other than a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), shall file a quarterly report on Form N–Q (§§ 249.332 and 274.130 of this chapter) not more than 60 days after the close of the first and third quarters of each fiscal year. A registered management investment company that has filed a registration statement with the Commission registering its securities for the first time under the Securities Act of 1933 is relieved of this reporting obligation with respect to any reporting

period or portion thereof prior to the date on which that registration statement becomes effective or is withdrawn. A registered management investment company regulated as a money market fund under § 270.2a–7 is relieved of the reporting obligation required pursuant to Item 1 of Form N–Q.

6. Section 270.30b1–6 is added to read as follows:

§ 270.30b1–6 Monthly report for money market funds.

Every registered open-end management investment company, or series thereof, that is regulated as a money market fund under § 270.2a–7 must file with the Commission a monthly report of portfolio holdings on Form N–MFP no later than the second business day of each month.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

7. The authority citation for Part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l,* 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

8. Section 274.201 and Form N–MFP are added to read as follows:

§ 274.201 Form N–MFP, Portfolio Holdings of Money Market Funds.

This form shall be used by registered management investment companies that are regulated as money market funds under § 270.2a–7 of this chapter to file reports pursuant to § 270.30b1–6 of this chapter not later than two business days after the end of each month.

Note: The text of Form N–MFP will not appear in the Code of Federal Regulations.

Form N–MFP—Monthly Schedule of Portfolio Holdings of Money Market Funds

Form N–MFP is to be used by open-end management investment companies, or series thereof, that are regulated as money market funds under § 270.2a–7 (''money market funds''), to file reports with the Commission, not later than the second business day of each month, pursuant to rule 30b1–6 under the Investment Company Act of 1940 (17 CFR 270.30b1–6). The Commission may use the information provided on Form N–MFP in its regulatory, disclosure review, inspection, and policymaking roles.

General Instructions

A. Rule as to Use of Form N–MFP

Form N–MFP is the public reporting form that is to be used for monthly reports of money market funds under section 30(b) of the Investment Company Act of 1940 (the ''Act'') and rule 30b1–6 of the Act (17 CFR 270.30b1–6). Form N–MFP must be filed no later than the second business day of each month, and will contain certain information about the money market fund and its portfolio holdings as of the last business day of the preceding month.

B. Application of General Rules and Regulations

The General Rules and Regulations under the Act contain certain general requirements that are applicable to reporting on any form under the Act. These general requirements should be carefully read and observed in the preparation and filing of reports on this form, except that any provision in the form or in these instructions shall be controlling.

C. Filing of Form N–MFP

A money market fund must file Form N–MFP no later than the second business day of each month, in accordance with rule 232.13 of Regulation S–T. Form N–MFP must be filed electronically using the Commission's EDGAR system.

D. Paperwork Reduction Act Information

A registrant is not required to respond to the collection of information contained in Form N–MFP unless the Form displays a currently valid Office of Management and Budget (''OMB'') control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM N–MFP—MONTHLY SCHEDULE OF PORTFOLIO HOLDINGS OF MONEY MARKET FUNDS

Date of Filing:
Report for [Month, Day, Year]
Name and Address of Fund or Portfolio Filing This Report:
CIK Number:
SEC File Number:
EDGAR Series Identifier:
Number of share classes offered:
Check here if Amendment [ ]
Amendment Number:
Is this an Initial Filing? [Y/N]
Is this a Final Filing? [Y/N]
Is the fund liquidating? [Y/N]
Is the fund merging with another fund? [Y/N]
If so, please identify the other fund by name, SEC File Number, and EDGAR Series Identifier.
Is the fund being acquired by another fund? [Y/N]
If so, please identify the acquiring fund by name, SEC File Number, and EDGAR Series Identifier.

Part I: Information about the Fund

Item 1. Name of Investment Adviser.
  a. SEC file number of Investment Adviser.
Item 2. Name of Sub-Adviser. If a fund has multiple sub-advisers, disclose the name of all sub-advisers to the fund.
  a. SEC file number of Sub-Adviser. Disclose the SEC file number of each sub-adviser to the fund.
Item 3. Independent Auditor.
Item 4. Administrator.
Item 5. Transfer Agent.
  a. SEC file number of Transfer Agent.
Item 6. Minimum initial investment.
Item 7. Is this a feeder fund? [Y/N]
  a. If this is a feeder fund, identify the master fund.
  b. SEC File Number of the master fund.
Item 8. Is this a master fund? [Y/N]
  a. If this is a master fund, identify all feeder funds.
  b. SEC File Number of each feeder fund.
Item 9. Is this portfolio primarily used to invest cash collateral? [Y/N]
Item 10. Is this portfolio primarily used to fund variable accounts? [Y/N]
Item 11. Category. Indicate whether the money market fund is a Treasury, Government/Agency, Prime, Tax-Free National, or Tax-Free State Fund.
Item 12. Total value of the portfolio at cost, to the nearest hundredth of a cent.
Item 13. Net value of other assets and liabilities, to the nearest hundredth of a cent.
Item 14. Net asset value per share for purposes of distributions, redemptions, and repurchase, to the nearest hundredth of a cent.
Item 15. Net shareholder flow activity for the month ended (subscriptions less redemptions).
Item 16. Dollar weighted average maturity. Calculate the dollar

weighted average maturity of portfolio securities, based on the time remaining until the next interest rate re-set.

Item 17. Dollar weighted average life maturity. Calculate the dollar weighted average maturity of portfolio securities based on final legal maturity or demand feature.

Item 18. 7-day gross yield. Based on the 7 days ended on the last day of the prior month, calculate the Fund's yield by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one share at the beginning of the period and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then multiplying the base period return by (365/7) with the resulting yield figure carried to at least the nearest hundredth of one percent. The 7-day gross yield should not reflect a deduction of shareholders fees and fund operating expenses.

Part 2: Schedule of Portfolio Securities. For each security held by the money market fund, please disclose the following:

Item 19. The name of the issuer.

Item 20. CIK number of the issuer.

Item 21. The title of the issue.

Item 22. The CUSIP.

Item 23. Other unique identifier (if the instrument does not have a CUSIP).

Item 24. The category of investment. Please indicate the category that most closely identifies the instrument from among the following: Treasury Debt; Government Agency Debt; Variable Rate Demand Notes; Other Municipal Debt; Financial Company Commercial Paper; Asset Backed Commercial Paper; Certificate of Deposit; Structured Investment Vehicle Notes; Other Notes; Treasury Repurchase Agreements; Government Agency Repurchase Agreements; Other Repurchase Agreements; Insurance Company Funding Agreements; Investment Company; Other Instrument.

Item 25. Rating. Please indicate whether the security is a 1st tier security, unrated, or no longer eligible.

Item 26. Requisite NRSROs.

a. Identify each Requisite NRSRO.

b. For each Requisite NRSRO, disclose the credit rating given by the Requisite NRSRO.

Item 27. The maturity date as determined under rule 2a–7. Disclose the maturity date, taking into account the maturity shortening provisions of rule 2a–7.

Item 28. The final legal maturity date.

Item 29. Is the maturity date extendable? [Y/N]

Item 30. Does the security have a credit enhancement? [Y/N]

Item 31. For each credit enhancement, disclose:

a. The type of credit enhancement.

b. The identity of the credit enhancement provider.

c. The credit rating of the credit enhancement provider.

Item 32. Does the security have an insurance guarantee? [Y/N]

Item 33. For each insurance guarantee provider, disclose:

a. The identity of the insurance guarantee provider.

b. The credit rating of the insurance guarantee provider.

Item 34. Does the security have a liquidity provider? [Y/N]

Item 35. For each liquidity provider, disclose:

a. The identity of the liquidity provider.

b. The credit rating of the liquidity provider.

Item 36. The principal amount of the security.

Item 37. The current amortized cost, to the nearest hundredth of a cent.

Item 38. Is this a Level 1, Level 2, or Level 3 security, or Other? Please explain how the security was valued. Level 1 securities are valued based on quoted prices in active markets for identical securities. Level 2 securities are valued based on other significant observable inputs (including quoted prices for similar securities, interest rates, prepayment speeds, credit risks, etc.). Level 3 securities are valued based on significant unobservable inputs (including the fund's own assumptions in determining the fair value of investments). *See* Statement of Financial Accounting Standards Board No. 157, ''Fair Value Measurement.''

Item 39. The percentage of the money market fund's gross assets invested in the security, to the nearest hundredth of one percent.

Item 40. Explanatory notes. Please disclose any other information that may be material to other disclosure in the Form.

Dated: June 30, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–15906 Filed 7–7–09; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Wednesday,
July 8, 2009

Part III

Environmental Protection Agency

California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California's 2009 and Subsequent Model Year Greenhouse Gas Emission Standards for New Motor Vehicles; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8927–2]

California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California's 2009 and Subsequent Model Year Greenhouse Gas Emission Standards for New Motor Vehicles

SUMMARY: The Environmental Protection Agency (EPA) is granting the California Air Resources Board's (CARB's) request for a waiver of Clean Air Act preemption to enforce its greenhouse gas emission standards for model year 2009 and later new motor vehicles. This decision is under section 209(b) of the Clean Air Act (the ''Act''), as amended. This decision withdraws and replaces EPA's prior denial of the CARB's December 21, 2005 waiver request, which was published in the **Federal Register** on March 6, 2008.

DATES: Petitions for review must be filed by September 8, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2006–0173. All documents and public comments in the docket are listed on the *www.regulations.gov* Web site. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html.* The electronic mail (e-mail) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov,* the telephone number is (202) 566–1742 and the fax number is (202) 566–9744.

FOR FURTHER INFORMATION CONTACT: Specific questions may be addressed to David Dickinson, Office of Transportation and Air Quality, Compliance and Innovative Strategies Division (6405J–NLD), EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone: (202) 343–9256, e-mail: *Dickinson.David@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

Today, I, as Administrator of the Environmental Protection Agency, am granting California's request for a waiver of Clean Air Act preemption for California's greenhouse gas emission standards for 2009 and later model years of new motor vehicles, adopted by the California Air Resources Board on September 24, 2004. This decision withdraws and replaces EPA's previous March 6, 2008 Denial of California's waiver request.

In the March 6, 2008 Denial, EPA determined that one of the three criteria for denial of a waiver had been met, namely, that California did not need its

State standards to meet compelling and extraordinary conditions. I have reconsidered that determination, which was based on an interpretation of section 209(b)(1) of the Clean Air Act that I now reject. Based on a review of the statutory language, legislative history, and the comments received, I am returning to EPA's traditional interpretation of this provision. Applying EPA's traditional interpretation I have determined that the waiver should not be denied under this criterion. Since the March 6, 2008 Denial did not evaluate or make any determinations concerning either of the other two waiver criteria, I have evaluated those criteria and determined that the waiver should not be denied under either of them. This includes careful consideration of all of the evidence presented concerning technological feasibility of the model year 2009 and later model year standards, considering lead time and the cost of implementation.

The legal framework for this decision stems from the waiver provision first adopted by Congress in 1967, and later modified in 1977. Congress established that there would be only two programs for control of emissions from new motor vehicles—EPA emission standards adopted under the Clean Air Act and California emission standards adopted under its state law. Congress accomplished this by preempting all state and local governments from adopting or enforcing emission standards for new motor vehicles, while at the same time providing that California could receive a waiver of preemption for its emission standards and enforcement procedures. This struck an important balance that protected manufacturers from multiple and different state emission standards, and preserved a pivotal role for California in the control of emissions from new motor vehicles. Congress recognized that California could serve as a pioneer and a laboratory for the nation in setting new motor vehicle emission standards. Congress intentionally structured this waiver provision to restrict and limit EPA's ability to deny a waiver, and did this to ensure that California had broad discretion in selecting the means it determined best to protect the health and welfare of its citizens. Section 209(b) specifies that EPA must grant California a waiver if California determines that its standards are, in the aggregate, at least as protective of the public health and welfare as applicable Federal standards. EPA may deny a waiver only if it makes at least one of three findings specified under the Clean Air Act (including whether California's ''protectiveness finding'' noted above is arbitrary and capricious). Therefore, EPA's role upon receiving a request for waiver of preemption from California is to determine whether it is appropriate to make any of the three findings specified by the Clean Air Act and if the Agency cannot make at least one of the three findings then the waiver must be granted. The three waiver criteria are properly seen as criteria for a denial—EPA must grant the waiver unless at least one of three criteria for a denial is met. This is different from most waiver situations before the Agency, where EPA typically determines whether it is appropriate to make certain findings necessary for granting a waiver, and if the findings are not made then a waiver is denied. This reversal of the normal statutory structure embodies and is consistent with the congressional intent of providing deference to California to maintain its own new motor vehicle emissions program.

The three criteria for denial of a waiver are: First, whether California's determination that its standards are, in the aggregate, at least as protective as applicable Federal standards is arbitrary and capricious (Section 209(b)(1)(A)); second, whether California has a need for such standards to meet compelling and extraordinary conditions (Section 209(b)(1)(B)); and third, whether California's standards are consistent with Section 202(a) of the Act (Section 209(b)(1)(C)). EPA has consistently interpreted the waiver provision as placing the burden on the opponents of a waiver to demonstrate that one of the criteria for a denial has been met. In this context, since 1970, EPA has recognized its limited discretion in reviewing California waiver requests. EPA has granted over 50 waivers of preemption and has only fully denied one waiver request, the decision under reconsideration here.

In this case, California first requested that EPA waive preemption for its new motor vehicle greenhouse gas emission standards on December 21, 2005. EPA did not begin its formal consideration of the waiver request until after the *Massachusetts* v. *EPA* decision in April 2007, in which the Supreme Court determined that greenhouse gases are air pollutants within that term's meaning in the Clean Air Act. On March 6, 2008, after an administrative process that included two public hearings and a written comment period, EPA published its final decision denying California's request. EPA's waiver denial was based on the second waiver criterion, with EPA determining that California did not need its greenhouse gas standards to meet compelling and extraordinary conditions. EPA did not address the other two waiver criteria.

The reconsideration process started early this year. On January 21, 2009, California Governor Schwarzenegger sent a letter to President Obama, and the California Air Resources Board sent a letter to Administrator-designee Jackson, requesting the Agency reconsider the prior denial. After reviewing CARB's reconsideration request and the concerns raised by many different parties, EPA found that there were significant issues regarding the Agency's denial of the waiver. The denial was a substantial departure from EPA's longstanding interpretation of the Clean Air Act's waiver provision and EPA's history of granting waivers to California for its new motor vehicle emissions program. Many different parties, including California, states that have adopted or are interested in adopting California's standards, members of Congress, scientists, and other stakeholders, had expressed similar concerns about the denial of the waiver. Based on this, EPA believed there was merit to reconsidering its decision denying California's waiver request and on February 12, 2009, EPA published a **Federal Register** notice announcing its reconsideration of California's greenhouse gas waiver request. EPA held a public hearing on March 5, 2009, and received written comments through April 6, 2009.

EPA received substantial comment on each of the three waiver criteria. The entire administrative process in consideration of California's request provided the Agency with extensive legal argument and evidence, including oral testimony from three public hearings and nearly 500,000 written comments. This material has been substantive and invaluable in the Agency's review. EPA has received extensive comments from many states; federal, state and local officials; industry; environmental groups; scientists; and other stakeholders. The vast majority of comments EPA received were in support of the waiver.

After a thorough evaluation of the record, I am withdrawing EPA's March 6, 2008 Denial and have determined that the most appropriate action in response to California's greenhouse gas waiver request is to grant that request. I have determined that the waiver opponents have not met their burden of proof in order for me to deny the waiver under any of the three criteria in section 209(b)(1). The findings I have made concerning each of the criteria are summarized below.

Concerning the criterion with respect to the protectiveness of California's standards in the aggregate, I find that the opponents of the waiver have not met their burden to demonstrate that California's determination was arbitrary and capricious. This evaluation can properly by made in situations where EPA has not issued its own standards, and this finding is appropriate whether or not comparison is made to EPA's current emissions standards or the National Highway Transportation Safety Administration's (NHTSA's) fuel economy standards, and whether or not it includes an evaluation of the real-world in-use effect of California's greenhouse gas standards on its broader motor vehicle program.

With respect to the criterion concerning the need for California's state standards to meet compelling and extraordinary conditions, I have found that the March 6, 2008 Denial was based on an inappropriate interpretation of the waiver provision. The March 6, 2008 Denial determined that Congress intended to allow California to promulgate only those state standards that address pollution problems that are local or regional, and this provision was not intended to allow California to promulgate state standards designed to address global climate change problems. In the alternative, EPA found that the effects of climate change in California are not compelling and extraordinary compared to the effects in the rest of the country.

The text of section 209(b) and the legislative history, when viewed together, lead me to reject the interpretation adopted in the March 6, 2008 Denial, and to apply the traditional interpretation to the evaluation of California's greenhouse gas standards for motor vehicles. If California needs a separate motor vehicle program to address the kinds of compelling and extraordinary conditions discussed in the traditional interpretation, then Congress intended that California could have such a program. Congress also intentionally provided California the broadest possible discretion in adopting the kind of standards in its motor vehicle program that California determines are appropriate to address air pollution problems and protect the health and welfare of its citizens. The better interpretation of the text and legislative history of this provision is that Congress did not use this criterion to limit California's discretion to a certain category of air pollution problems, to the exclusion of others.

Under that interpretation, I cannot find that opponents of the waiver have demonstrated that California does not need its state standards to meet compelling and extraordinary conditions. The opponents of the waiver have not adequately demonstrated that California no longer has a need for its motor vehicle emissions program. I have also determined that even under the interpretation announced in the March 6, 2008 Denial, opponents of the waiver have not demonstrated that California does not need its greenhouse gas emission standards to meet compelling and extraordinary conditions. In addition, I have interpreted the ''compelling and extraordinary conditions'' criterion to not properly include a consideration of whether the impacts from climate change are compelling and extraordinary in California. Nevertheless, I have evaluated the comments received and evidence in the record and have determined that the opponents of the waiver have not met their burden in demonstrating why evidence such as the impacts of climate change on existing ozone conditions in California along with the cumulative impacts identified by proponents of the waiver (*e.g.,* impacts on snow melt and water resources and agricultural water supply, wildfires, coastal habitats, ecosystems, etc.) is not compelling and extraordinary.

Concerning the criterion with respect to consistency of the greenhouse gas emission standards with section 202(a), EPA has reviewed extensive comments and records received from California and from the regulated community concerning the kinds of technology needed to comply with California's standards, including costs and lead time, as well as evidence concerning the current compliance status of manufacturers. In light of the previous waiver denial, EPA specifically asked for comment on how lead time should be evaluated as part of the Agency's reconsideration. Based on all of that information, I cannot find that opponents of the waiver have demonstrated that the greenhouse gas emission standards are inconsistent with section 202(a). While I believe that a grant of the waiver for model year 2009 would not be a retroactive change in the law, to limit any potential concerns that have been raised by the manufacturers over their potential reliance upon EPA's previous waiver denial, my decision provides that CARB may not hold a manufacturer liable or responsible for any noncompliance civil penalty action caused by emission debits generated by a manufacturer for the 2009 model year.

EPA finds that those opposing the waiver request have not met the burden of demonstrating that California's regulations do not satisfy the statutory criteria of section 209(b). For this reason, I am granting California's waiver request to enforce its greenhouse gas motor vehicle emission regulations.

II. Background

A. California's Greenhouse Gas Program for New Motor Vehicles

As further explained below, CARB has adopted amendments to title 13, California Code of Regulations (CCR), sections 1900 and 1961, and established standards to regulate greenhouse gas (GHG) emissions from new passenger cars, light-duty trucks and medium-duty vehicles in a new section 1961.1.

California's GHG standards are included as part of its second generation low-emission vehicle program known as LEV II. EPA previously issued a waiver for the LEV II program and also issued a waiver for CARB's zero-emission vehicle program (known as ZEV) through the 2011 model year (MY).[1] By Resolution 04–28, CARB approved the GHG standards for motor vehicles on September 24, 2004, and California's Office of Administrative Law approved the regulations on September 15, 2005.[2]

CARB's regulation covers large-volume motor vehicle manufacturers beginning in the 2009 model year, and intermediate and small manufacturers beginning in the 2016 model year and controls greenhouse gas emissions from two categories of new motor vehicles—passenger cars and the lightest trucks (PC and LDT1) and heavier light-duty trucks and medium-duty passenger vehicles (LDT2 and MDPV). The regulations add four new greenhouse gas air contaminants (carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), and hydrofluorocarbons (HFCs)) to California's existing regulations for criteria and criteria-precursor pollutants and air toxic contaminants. There are separate fleet average emission standards for the two vehicle size categories and within each category the sales-weighted average of a manufacturer's vehicles is required to comply with the standard. The regulations establish a manufacturer declining fleet average emission standard for these gases (expressed as grams of carbon dioxide equivalent per mile (''gpm'')), with separate standards for each of the two categories of passenger vehicles noted above. CARB places the declining standards into two phases: near-term standards phased in

[1] 68 FR 19811 (April 22, 2003) and 71 FR 78190 (December 26, 2006).

[2] California Air Resources Board, EPA–HQ–OAR–2006–0173–0004.2.

from the 2009 through 2012 model years, and mid-term standards, phased in from the 2013 through 2016 model years. Manufacturers may receive credits for meeting the standards before model year 2009, for surpassing the standards in later model years, and for selling alternative fuel vehicles. These credits may be banked for later use, transferred between vehicle categories, or sold to another manufacturer. If a manufacturer fails to meet the standard in a particular model year, it will begin to accrue debits. At that point it will have five years to make up for the debits, either by generating credits, or by purchasing credits from another manufacturer.

B. EPA's Consideration of CARB's Request

By letter dated December 21, 2005, CARB submitted a request (''Waiver Request'') seeking a waiver of Section 209(a)'s prohibition for its motor vehicle GHG standards.[3] On February 21, 2007, EPA notified the Executive Officer of CARB that the timing of EPA's consideration of the GHG waiver request was related to the then-pending *Massachusetts* v. *EPA* case before the United States Supreme Court. EPA stated that the decision in that case could potentially be relevant to issues EPA might address in the context of the GHG waiver proceeding. The Supreme Court issued its *Massachusetts* v. *EPA* decision on April 2, 2007, finding that greenhouse gases are air pollutants under the Clean Air Act, and that EPA is required to decide the pending rulemaking petition under section 202(a) of the Act, based on the statutory criteria of whether, in the Administrator's judgment, emissions of greenhouse gases from new motor vehicles cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.[4]

On April 30, 2007, a **Federal Register** notice was published announcing an opportunity for hearing and comment on CARB's request.[5] EPA subsequently held two public hearings on May 22, 2007, in Washington, DC, and on May 30, 2007, in Sacramento, CA. The written comment period closed on June 15, 2007. On several occasions, EPA received requests to extend or re-open the comment period; however, the Agency did not extend the June 15, 2007 deadline. The Agency instead indicated that consistent with past waiver practice it would continue, as appropriate, to communicate with stakeholders and evaluate any comments submitted after the close of the comment period to the extent practicable. By letter dated December 19, 2007, EPA notified California Governor Schwarzenegger that EPA would be denying the waiver. On March 6, 2008, EPA published its decision denying California's waiver request (March 6, 2008 Denial).[6]

EPA's March 6, 2008 Denial was based on a finding that California did not need its GHG standards for new motor vehicles to meet compelling and extraordinary conditions. Because this finding was sufficient to deny California's waiver request, the Administrator found it unnecessary to determine whether the criteria for denial of a waiver under sections 209(b)(1)(A) and (C) had been met.

On January 21, 2009, CARB submitted a request for EPA to reconsider its March 6, 2008 Denial (''Reconsideration Request'').[7] CARB's Reconsideration Request stated its belief that EPA has the inherent authority to reconsider its previous waiver denial and EPA should do so in order to restore the Agency's interpretations and applications of the Clean Air Act to continue California's longstanding leadership role in setting emission standards. Specifically, CARB noted several bases for the reconsideration centered on EPA's misinterpretation of the Clean Air Act to set new flawed tests and misapplication of facts to those tests.

President Obama issued a Presidential Memorandum to the Administrator of the Environmental Protection Agency on January 26, 2009, stating that ''In order to ensure that the EPA carries out its responsibilities for improving air quality, you are hereby requested to assess whether the EPA's decision to deny a waiver based on California's application was appropriate in light of the Clean Air Act. I further request that, based on that assessment, the EPA initiate any appropriate action.'' [8]

Subsequently, EPA published a **Federal Register** notice on February 12, 2009, which responded to CARB's reconsideration request and announced that EPA would fully review and reconsider its March 6, 2008 Denial.[9] The February 12, 2009 notice specifically sought comment on: any new or additional information regarding the three section 209(b) waiver criteria; whether EPA's interpretation and application of section 209(b)(1)(B) in the March 6, 2008 Denial was appropriate; and, the effect of the waiver denial on whether CARB's GHG standards are consistent with section 202(a), including lead time. After holding a public hearing on March 5, 2009, the written comment period closed on April 6, 2009.

III. Analysis of Preemption Under Section 209(a) of the Clean Air Act

A. Clean Air Act Preemption Provisions

Section 209(a) of the Act provides:

> No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.[10]

Section 209(b)(1) of the Act requires the Administrator, after an opportunity for public hearing, to waive application of the prohibitions of section 209(a) for any State that has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor engines prior to March 30, 1966, if the State determines that its State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.[11] However, no such waiver shall be granted by the Administrator if she finds that: (A) The protectiveness determination of the State is arbitrary and capricious; (B) the State does not need such State standards to meet compelling and extraordinary conditions; or (C) such State standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. In previous waiver decisions, EPA has stated that Congress intended EPA's review of California's decision-making be narrow. This has led EPA to reject arguments that are not specified in the statute as grounds for denying a waiver:

[3] California Air Resources Board, EPA–HQ–OAR–2006–0173–0004.

[4] *Massachusetts* v. *EPA,* 549 U.S. 497, 127 S. Ct. 1438 (2007). On April 24, 2009, EPA issued ''Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act'' at 74 FR 18885 (April 24, 2009).

[5] 72 FR 21260 (April 30, 2007).

[6] 73 FR 12156 (March 6, 2008). The State of California brought litigation against EPA in the United States Court of Appeals, DC Circuit. This litigation is held in abeyance pending further order of the court. (February 25, 2009).

[7] California Air Resources Board, EPA–HQ–OAR–2006–0173–7044.

[8] 74 FR 4905 (January 28, 2009).

[9] 74 FR 7040 (February 12, 2009).

[10] Clean Air Act section 209(a).

[11] California is the only State which meets section 209(b)(1)'s requirement for obtaining a waiver. *See* S. Rep. No. 90–403 at 632 (1967).

The law makes it clear that the waiver requests cannot be denied unless the specific findings designated in the statute can properly be made. The issue of whether a proposed California requirement is likely to result in only marginal improvement in air quality not commensurate with its cost or is otherwise an arguably unwise exercise of regulatory power is not legally pertinent to my decision under section 209, so long as the California requirement is consistent with section 202(a) and is more stringent than applicable Federal requirements in the sense that it may result in some further reduction in air pollution in California.[12]

Thus, my consideration of all the evidence submitted concerning a waiver decision is circumscribed by its relevance to those questions that I may consider under section 209(b).

B. Deference to California

In previous waiver decisions, EPA has recognized that the intent of Congress in creating a limited review based on the section 209(b)(1) criteria was to ensure that the federal government did not second-guess the wisdom of state policy. This has led EPA to state:

It is worth noting * * * I would feel constrained to approve a California approach to the problem which I might also feel unable to adopt at the federal level in my own capacity as a regulator. The whole approach of the Clean Air Act is to force the development of new types of emission control technology where that is needed by compelling the industry to ''catch up'' to some degree with newly promulgated standards. Such an approach * * * may be attended with costs, in the shaped of reduced product offering, or price or fuel economy penalties, and by risks that a wider number of vehicle classes may not be able to complete their development work in time. Since a balancing of these risks and costs against the potential benefits from reduced emissions is a central policy decision for any regulatory agency under the statutory scheme outlined above, I believe I am required to give very substantial deference to California's judgments on this score.[13]

EPA has stated that the text, structure, and history of the California waiver provision clearly indicate both a congressional intent and appropriate EPA practice of leaving the decision on ''ambiguous and controversial matters of public policy'' to California's judgment.[14]

The House Committee Report explained as part of the 1977 amendments to the Clean Air Act, where Congress had the opportunity to restrict the waiver provision, it elected instead to explain California's flexibility to adopt a complete program of motor vehicle emission controls. The amendment is intended to ratify and strengthen the California waiver provision and to affirm the underlying intent of that provision, *i.e.,* to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare.[15]

C. Burden of Proof

In *Motor and Equip. Mfrs Assoc.* v. *EPA,* 627 F.2d 1095 (DC Cir. 1979) (*MEMA I*), the U.S. Court of Appeals stated that the Administrator's role in a section 209 proceeding is to:

consider all evidence that passes the threshold test of materiality and * * * thereafter assess such material evidence against a standard of proof to determine whether the parties favoring a denial of the waiver have shown that the factual circumstances exist in which Congress intended a denial of the waiver.[16]

The court in *MEMA I* considered the standards of proof under section 209 for the two findings necessary to grant a waiver for an ''accompanying enforcement procedure'' (as opposed to the standards themselves): (1) Protectiveness in the aggregate and (2) consistency with section 202(a) findings. The court instructed that ''the standard of proof must take account of the nature of the risk of error involved in any given decision, and it therefore varies with the finding involved. We need not decide how this standard operates in every waiver decision.'' [17]

The court upheld the Administrator's position that, to deny a waiver, there must be 'clear and compelling evidence' to show that proposed procedures undermine the protectiveness of California's standards.[18] The court noted that this standard of proof also accords with the congressional intent to provide California with the broadest possible discretion in setting regulations it finds protective of the public health and welfare.[19]

With respect to the consistency finding, the court did not articulate a standard of proof applicable to all proceedings, but found that the opponents of the waiver were unable to meet their burden of proof even if the standard were a mere preponderance of the evidence. Although *MEMA I* did not explicitly consider the standards of proof under section 209 concerning a waiver request for ''standards,'' as compared to accompanying enforcement procedures, there is nothing in the opinion to suggest that the court's analysis would not apply with equal force to such determinations. EPA's past waiver decisions have consistently made clear that: ''[E]ven in the two areas concededly reserved for Federal judgment by this legislation—the existence of compelling and extraordinary' conditions and whether the standards are technologically feasible—Congress intended that the standards of EPA review of the State decision to be a narrow one.'' [20]

Finally, opponents of the waiver bear the burden of showing that the criteria for a denial of California's waiver request has been met. As found in *MEMA I,* this obligation rests firmly with opponents of the waiver in a section 209 proceeding, holding that: ''[t]he language of the statute and it's legislative history indicate that California's regulations, and California's determinations that they must comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them. California must present its regulations and findings at the hearing and thereafter the parties opposing the waiver request bear the burden of persuading the Administrator that the waiver request should be denied.'' [21]

The Administrator's burden, on the other hand, is to make a reasonable evaluation of the information in the record in coming to the waiver decision. As the court in *MEMA I* stated, ''Here, too, if the Administrator ignores evidence demonstrating that the waiver should not be granted, or if he seeks to overcome that evidence with unsupported assumptions of his own, he runs the risk of having his waiver decision set aside as 'arbitrary and capricious.' '' [22] Therefore, the Administrator's burden is to act ''reasonably.'' [23]

EPA received comment suggesting that the burden of proof upon reconsideration of EPA's March 6, 2008 Denial should be reversed and placed on California.[24] It is not clear whether

[12] 36 FR 17458 (Aug. 31, 1971). Note that the more stringent standard expressed here, in 1971, was superseded by the 1977 amendments to section 209, which established that California must determine that its standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.

[13] 40 FR 23103–23104; *see also* LEV I Decision Document at 64.

[14] 40 FR 23104; 58 FR 4166.

[15] *MEMA I,* 627 F.2d at 1110 (citing H.R. Rep. No. 294, 95 Cong., 1st Sess. 301–02 (1977).

[16] *MEMA I,* 627 F.2d at 1122.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *See, e.g.,* 40 FR 21102–103 (May 28, 1975).

[21] *MEMA I,* 627 F.2d at 1121.

[22] *Id.* at 1126.

[23] *Id.* at 1126.

[24] Alliance of Automobile Manufacturers, EPA–HQ–OAR–2006–0173–8994 at 6–7.

the commenter is also suggesting that the entire burden of proof now shifts to California in that ''[s]uch an allocation of the burden of proof ensures that decisions in which EPA has invested time and resources are not lightly overturned, and that those decisions enjoy the finality to which they are entitled.'' Moreover, the commenter suggests that EPA carries a separate responsibility, in order to reverse its prior decision, to explain why its first decision on the waiver request is no longer the correct one. The commenter cites several cases for the proposition that ''[A]n agency changing its course * * * is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance'' and that an agency must offer sufficient explanation to ensure the court that it is not ''repudiating precedent to conform with shifting political mood.'' [25]

EPA believes that, regardless of the previous waiver denial, once California makes its protectiveness determination the burden of proof falls on the opponents of the waiver. This burden is inherent in the statutory requirement that EPA grant the waiver unless it makes one of the specific negative findings in section 209(b)(1).[26] This is consistent with the legislative history, which indicates that Congress intended a narrow review by EPA and to preserve the broadest possible discretion for California.[27]

As EPA explained in the previous waiver denial, the Agency did not address the section 209(b)(1)(A) and (C) criteria in its decision; therefore EPA is not in a position of reversing any interpretations or evidentiary findings. As further discussed in section VI, although commenters argue various adverse effects of the prior waiver denial on lead time, the burden remains on the opponents of the waiver to demonstrate why California's GHG standards are not consistent with section 202(a). With regard to section 209(b)(1)(B) and EPA's prior waiver denial, EPA has provided a reasoned analysis and explanation for any reversal of positions taken in this new decision. In the context of this reasoned explanation, EPA believes it is only required to demonstrate that it is aware that it is changing positions and that there are good reasons for the change in position.[28] As discussed above, the burden of proof under section 209(b)(1)(B) still falls on those who wish EPA to deny the waiver, based on the statutory structure of section 209(b)(1) and the legislative history. This requirement is not disturbed by EPA's initial denial.

IV. California's Protectiveness Determination

Section 209(b)(1)(A) of the Act requires EPA to deny a waiver if the Administrator finds that California was arbitrary and capricious in its determination that its State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. EPA recognizes that the phrase ''States standards'' means the entire California new motor vehicle emissions program. Therefore, as explained below, when evaluating California's protectiveness determination, EPA compares the California-to-Federal standards. That comparison is undertaken within the broader context of the previously waived California program, which relies upon protectiveness determinations that EPA have previously found were not arbitrary and capricious.[29]

Traditionally, EPA has evaluated the stringency of California's standards relative to comparable EPA emission standards.[30] That evaluation follows the instruction of section 209(b)(2), which states: ''If each State standard is at least as stringent as the comparable applicable Federal standard, such State standard shall be deemed to be at least as protective of health and welfare as such Federal standards for purposes of [209(b)(1)].''

To review California's protectiveness determination in light of section 209(b)(2), EPA conducts its own analysis of the newly adopted California standards to comparable applicable Federal standards. Reviewing that comparison quantitatively answers whether the new standards are more or less protective than the Federal standards. That comparison of the newly adopted California standards to the comparable applicable Federal standards is conducted in light of prior waiver determinations. That is, the California-to-Federal analysis is undertaken within the broader context of the previously waived California program, which relies upon protectiveness determinations that EPA has not found arbitrary and capricious.[31]

A finding that California's determination was arbitrary and capricious under section 209(b)(1)(A) must be based upon '''clear and compelling evidence' to show that proposed [standards] undermine the protectiveness of California's standards.'' [32] Even if EPA's own analysis of comparable protectiveness or that suggested by a commenter might diverge from California's protectiveness finding, that is not a sufficient basis on its own for EPA to make a section 209(b)(1)(A) finding that California's protectiveness finding is arbitrary and capricious.[33]

California made a protectiveness determination with regard to its greenhouse gas regulations in Resolution 04–28, adopted by the California Air Resources Board on September 23, 2004.[34] Included in that Resolution were several bases to support

[25] *Id.*

[26] *MEMA I,* 627 F.2d at 1121.

[27] *MEMA I,* 627 F.2d at 1110–11, citing H.R. Rep. No. 294, 95th Cong., 1st Sess. 301–02 (1977).

[28] *Federal Communications Commission* v. *Fox Television Stations, Inc.,* 129 S.Ct. 1800, 1809 (2009).

[29] In situations where there are no Federal standards directly comparable to the specific California standards under review, the analysis then occurs against the backdrop of previous waivers which determined that the California program was at least as protective of the federal program ((LEV II + ZEV) + GHG). See 71 FR 78190 (December 28, 2006), Decision Document for Waiver of Federal Preemption for California Zero Emission Vehicle (ZEV) Standards (December 21, 2006).

[30] 36 FR 17458 (Aug. 31, 1971). (''The law makes it clear that the waiver requests cannot be denied unless the specific finding designated in the statute can properly be made. The issue of whether a proposed California requirement is likely to result in only marginal improvement in air quality not commensurate with its cost or is otherwise an arguably unwise exercise of regulatory power is not legally pertinent to my decision under section 209, so long as the California requirement is consistent with section 202(a) and is more stringent than applicable Federal requirements in the sense that it may result in some further reduction in air pollution in California.''). The ''more stringent'' standard expressed here in 1971 was superseded by the 1977 amendments to section 209, which established that California's standards must be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. The stringency standard remains, though, in section 209(b)(2).

[31] In situations where there are no Federal standards directly comparable to the specific California standards under review, the analysis then occurs against the backdrop of previous waivers which determined that the California program was at least as protective of the federal program ((LEV II + ZEV) + GHG). See 71 FR 78190 (December 28, 2006), Decision Document for Waiver of Federal Preemption for California Zero Emission Vehicle (ZEV) Standards (December 21, 2006).

[32] *MEMA I,* 627 F.2d at 1122.

[33] ''Once California has come forward with a finding that the procedures it seeks to adopt will not undermine the protectiveness of its standards, parties opposing the waiver request must show that this finding is unreasonable.'' *MEMA I,* 627 F.2d at 1124.

[34] California Air Resources Board, EPA–HQ–OAR–2006–0173–0010.107, ''Resolution 04–28, State of California, Air Resources Board, September 23, 2004'' (''BE IT FURTHER RESOLVED that the Board hereby determines that the regulations approved herein will not cause California motor vehicle emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards.'').

California's protectiveness determination. Most generally, CARB made a broad finding that observed and projected changes in California's climate are likely to have a significant adverse impact on public health and welfare in California, and that California is attempting to address those impacts by regulating in a field for which there are no comparable federal regulations.[35] CARB also found that its greenhouse gas standards will increase the health and welfare benefits from its broader motor vehicle emissions program by directly reducing upstream emissions of criteria pollutants from decreased fuel consumption.[36] Beyond that analysis of the new regulations' impact on its broader program, CARB projected consumer response to the greenhouse gas regulations. With respect to consumer shifts due to a potential ''scrappage effect'' (the impact of increased vehicle price on fleet age) and ''rebound effect'' (the impact of lower operating costs on vehicle miles travelled), CARB found minor impacts—but net reductions—on criteria pollutant emissions.[37] Further, even assuming larger shifts in consumer demand attributable to the greenhouse gas emission standards, CARB found that the result remains a net reduction in both greenhouse gas emissions and criteria pollutant emissions.[38] That is, CARB found that the addition of its greenhouse gas emission standards to its larger motor vehicle emissions program (LEV II), which generally aligns with the federal motor vehicle emissions program (Tier II), renders the whole program to be more protective of public health and welfare. CARB noted that EPA has already determined that California was not arbitrary and capricious in its determination that the pre-existing California standards for light-duty vehicles and trucks, known as LEV II, is at least as protective as comparable Federal standards, the Tier II standards.[39] Implicit in California's greenhouse gas protectiveness determination, then, is that the inclusion of greenhouse gas standards into California's existing motor vehicle emissions program will not cause California's program to be less protective than the federal program.

A. What Are ''Applicable Federal Standards''?

EPA has received comments suggesting that the section 209(b)(1)(A) comparison to ''applicable Federal standards'' should include corporate average fuel economy (CAFE) standards promulgated, or that in the future may be promulgated, by the National Highway Traffic Safety Administration under the Energy Policy and Conservation Act of 1975 (EPCA), as amended by the Energy Independence and Security Act of 2007 (EISA).[40] That suggestion departs from EPA's traditional analysis. EPA has always interpreted ''applicable Federal standards'' as limiting EPA's inquiry to motor vehicle emission standards established by EPA under the Clean Air Act. After a thorough examination of the text and legislative history of the section 209(b) waiver provision, EPA has determined that it should continue to interpret ''applicable Federal standards'' to mean motor vehicle emission standards established by EPA under the Clean Air Act that apply to the same cars and the same air pollutants or group of air pollutants as considered in California's aggregate protectiveness finding. Additionally, EPA has determined that even if it were appropriate to take NHTSA's fuel economy standards into account as ''applicable Federal standards,'' the waiver opponents have not met their burden of proof to demonstrate that California's protectiveness determination was arbitrary and capricious. No waiver opponent has demonstrated that existing or proposed fuel economy standards are more stringent or more protective of the public health and welfare than California's greenhouse gas emission standards.

1. Are ''Applicable Federal Standards'' Limited to Clean Air Act Emission Standards or Do They Include NHTSA's Fuel Economy Standards?

Section 209(b)(1)(A) requires EPA to evaluate whether California's determination regarding the comparative level of protectiveness of its standards of the public health and welfare was ''arbitrary and capricious.'' California's standards act to improve air quality, and thus benefit the public health and welfare, by establishing limits for emissions of air pollutants from new motor vehicles and new motor vehicle engines. California is then required to compare these new motor vehicle standards in the aggregate to ''applicable Federal standards'' to determine the relative protectiveness of California's standards. Depending on whether the waiver is granted or denied, vehicle manufacturers will either have to meet California standards for those new vehicles subject to its standards and EPA standards for others, or EPA standards for all of the new vehicles.

The most straightforward reading of the comparison called for by the statute, between California and Federal standards, is an ''apples to apples'' comparison. California has standards that apply to new motor vehicles and the standards set limits for emissions of air pollutants. California would then compare its standards to the same kind of Federal standard—Federal standards that apply to the same new motor vehicles and also set limits for emissions of air pollutants. The term ''applicable'' has to refer to what the Federal standards apply to, and the most straightforward meaning is that they apply in the same way that the

[35] California Air Resources Board, EPA–HQ–OAR–2006–0173–0010.107 at 9 (''Over the last hundred years, average temperatures in California have increased 0.7% F, sea levels have risen by three to eight inches, and spring run-off has decreased 12 percent. These observed and future changes are likely to have significant adverse effects on California's water resources, many ecological systems, as well as on human health and the economy. The signs of a global warming trend continue to become more evident and much of the scientific debate is now focused on expected rates at which future changes will occur.''); California Air Resources Board, EPA–HQ–OAR–2006–0173–0010.107 at 13 (''There are no comparable federal regulations that specifically require the control of greenhouse gas emissions from motor vehicles.'').

[36] ''The establishment of greenhouse gas emission standards will result in a reduction in upstream emissions (emission due to the production and transportation of the fuel used by the vehicle) of greenhouse gas, criteria and toxic pollutants due to reduced fuel usage.'' EPA–HQ–OAR–2006–0173–0010.107 at 8.

[37] ''Supplemental analysis of the potential response of consumers (consumer response) to the regulations was performed as part of the staff evaluation. The evaluation of consumer response indicates that the impact of vehicle price increases on fleet turnover (changes to the average age of the motor vehicle fleet) as well as the impacts of lower operating costs on vehicle miles traveled (rebound effect) by consumers have minor impacts (less than one percent of the passenger vehicle emissions inventory) on criteria pollutant emissions.'' EPA–HQ–OAR–2006–0173–0010.107 at 12.

[38] ''Taking into account the penetration of 2009 and later vehicles meeting the new standard, the proposed regulation will reduce greenhouse gas emission by an estimated 87,700 CO_2-equivelent tons per day statewide in 2020 and by 155,200 CO_2-equivelent tons per day in 2030. This translates into an 18 percent overall reduction in greenhouse gas emissions from the light duty fleet in 2020 and a 27 percent overall reduction in 2030; Taking into account the penetration of 2009 and later vehicles meeting the new standard, the proposed regulation will reduce upstream emissions of non-methane organic gases (NMOG) by 4.6 tons per day statewide in 2020 and 7.9 tons per day statewide in 2030, and will reduce upstream emissions of NO_X by 1.4 tons per day statewide in 2020 and 2.3 tons per day statewide in 2030. The regulation will provide a criteria pollutant benefit even taking into account possible pollutant increases due to consumer response.'' EPA–HQ–OAR–2006–0173–0010.107 at 15.

[39] 68 FR 19811 (April 22, 2003), Decision Document for Waiver of Federal Preemption for Low Emission Vehicle Amendments (LEV II) (April 11, 2003).

[40] Association of International Automobile Manufacturers, Inc., EPA–HQ–OAR–2006–1073–9005 at 13–14; Alliance of Automobile Manufacturers, EPA–HQ–OAR–2006–0173–8994 at 16–23.

California standards apply, by setting limits on emissions of air pollutants from specified new motor vehicles. ''[A]pplicable Federal standards'' would be standards that impose a requirement on new motor vehicles and that directly establishes limits on emissions of air pollutants, as do the California standards. The ''applicable'' Federal standards are those set by EPA that directly apply by regulation to the same vehicles and, like the California regulations, set limits for the same air pollutants.

This is a straightforward and logical approach that provides clear guidance for California on what standards to compare. It avoids an open-ended inquiry into what other potential Federal standards might regulate different vehicles or regulate different aspects of the vehicles than emissions, and instead focuses the comparison on a clearly-defined and identifiable set of Federal standards that are parallel to the California standards at issue.

This interpretation also ties the comparison to the only Federal standards that are affected by the results of the comparison. If the California comparison shows it is more protective and the waiver is granted, the California standards would apply to the vehicles under section 209(b) and compliance with the California's standards will be deemed to mean compliance with the EPA standards under section 209(b)(3). If the California comparison is arbitrary and capricious and a waiver is denied, then EPA's Federal emission standards apply to those vehicles and California's standards do not. The applicability of emission standards under section 209(b) that results from the waiver decision is parallel to and fully consistent with the comparison made between the California and applicable Federal standards.

EPA has always limited its interpretation of the section 209(b) waiver provision to the scope of section 209(a)'s preemption.[41] Section 209(a) creates the explicit preemption of state emission standards, and at the same time leaves EPA to set federal emission standards, under the authority of section 202(a). Within the context of section 209, and the preemption of 209(a), section 209(b)'s waiver provision allows California the ability to set its own emission standards. Notably, section 209(b) merely gives back to California what was taken away by section 209(a)—the ability to adopt and enforce its own state emission standards. This interaction between sections 209(a) and 209(b) supports interpreting the ''applicable Federal standards'' mentioned in section 209(b)(1)(A) to mean the same types of emission standards as the emission standards that are actually set by California are preempted under section 209(a), and are the subject of a waiver request under section 209(b).

Additionally, EPA's construction of ''applicable Federal standards'' provides a single, consistent usage of that phrase in the context of the section 209(b) waiver provision. In section 209(b), the phrase ''applicable Federal standards'' appears three times. The first two instances appear in sections 209(b)(1) and 209(b)(2) and pertain to EPA's review of California's protectiveness determination and the relative stringency of California's standards, as has been discussed above. The third instance occurs in section 209(b)(3) and specifically contemplates treatment of waived California standards for the purpose of Clean Air Act compliance. Section 209(b)(3) states: ''in the case of any new motor vehicle or new motor vehicle engine to which State standards apply pursuant to a waiver granted under paragraph (1), compliance with such State standards shall be treated as compliance with applicable Federal standards *for purposes of this title.''* (Emphasis added) The reference to Title II of the Clean Air Act in section 209(b)(3) is further reason to limit the construction of ''applicable Federal standards'' to comparable Clean Air Act emission standards in sections 209(b)(1) and 209(b)(2). All three occurrences of ''applicable Federal standards'' in section 209(b) are then given the same meaning, in a context where all three occurrences function interactively to allow California to enforce its own emission standards.

The textual structure and legislative history of the waiver provision also support EPA's interpretation of ''applicable Federal standards.'' The structure of section 209(b) is notable in its focus on limiting the ability of EPA to deny a waiver and preserving ''the broadest possible discretion'' for California to construct its motor vehicle program as it deems appropriate to protect its public health and welfare.[42] Where, as in this case, California's emission standards are specified in terms of direct regulation of emissions from new motor vehicles, it is most clearly reasonable for EPA to limit its review under this criterion to those federal standards that likewise set limits for the same air pollutant emissions from the same motor vehicles. This is consistent with Congress' intent to provide California the broadest discretion and avoids limiting California's authority and frustrating this congressional intent.[43] EPA, thus, has determined it is reasonable to interpret ''applicable Federal standards'' to mean those EPA standards under the Clean Air Act that apply in the same manner as the California emission standards, regulating emissions of air pollutants from new motor vehicles.[44] Under this approach, any EPA standard that, like California's standards, sets limits for motor vehicle emissions could be considered an ''applicable Federal standard'' for the purpose of California's protectiveness determination.[45]

Applying this interpretation, Federal fuel economy standards issued by NHTSA would not be considered ''applicable Federal standards'' for purposes of this waiver criterion. In contrast to standards set limits for emissions from new motor vehicles, corporate average fuel economy (CAFE) standards set limits on fuel efficiency, to reduce fuel consumption. In contrast to EPA's and California's emission standards, which typically establish grams per mile (''gpm'') levels of acceptable pollutant emissions, CAFE standards establish ''miles per gallon'' (''mpg'') levels of acceptable fuel efficiency. Standards that set limits for emission levels and standards that set limits for fuel efficiency apply different legal requirements. The two kinds of standards can overlap significantly, in that the technology used to increase fuel efficiency will also lead to reductions in emissions of one of the GHGs—CO_2—

[41] ''The legislative history of section 209 supports the Administrator's interpretation that the waiver provision is coextensive with the preemption provision, thereby permitting the Administrator to consider waiving preemption of California's entire program of emissions control.'' *MEMA I,* 627 F.2d 1095, 1108.

[42] H.R. Rep. No. 294, 95th Cong., 1st Sess. 301–302 (1977); *MEMA I,* 627 F. 2d at 1110–11.

[43] *See MEMA I,* 627 F. 2d at 1111.

[44] *Entergy Corp.* v. *Riverkeeper, Inc.,* 129 S.Ct. 1498 (2009) (''That view governs if it is a reasonable interpretation of the statute—not necessarily the only possible interpretation, nor even the interpretation deemed *most* reasonable by the courts. *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 8430844 (1984).'').

[45] In this waiver there are no EPA or other Federal standards that have been identified that explicitly and directly regulate emissions of GHGs from new motor vehicles. While emission standards promulgated by EPA have always been treated as applicable Federal standards because they explicitly regulate the same vehicles and air pollutants, there is the possibility that another Federal agency could have a standard that also directly and explicitly regulates emissions from some new motor vehicles. EPA is not aware of any such circumstances at this time, but reserves the right to consider in the future whether such a non-EPA Federal standard would be considered an ''applicable Federal standards'' for the purpose of a CAA waiver determination.

but they are not the same legal requirements and the regulations do not apply in the same manner.[46] Fuel economy standards do impact the levels of one GHG—CO_2—that is emitted from motor vehicles. But fuel economy standards do not set limits on emission levels of CO_2 or any other air pollutant, as do California's standards. Lacking that kind of regulation of emissions of an air pollutant, fuel economy standards are not ''applicable Federal standards.''

The difference between emission standards and fuel economy standards is highlighted by comparing the two sets of standards at issue here. California's greenhouse gas emission standards establish allowable grams per mile (''gpm'') levels for greenhouse gas emissions, including tailpipe emissions of carbon dioxide (CO_2), nitrous oxide (N_2O), and methane (CH_4) as well as emissions of CO_2 and hydrofluorocarbons (HFCs) related to operation of the air conditioning system. By regulating emissions of four different greenhouse gas pollutants, the standards do more than reduce tailpipe CO_2 emissions resulting from fuel combustion. They do not directly equate to miles per gallon fuel economy reductions. Fuel economy standards, on the other hand, directly control miles per gallon (''mpg'') fuel economy levels. CO_2 reductions will occur, but they are an expected indirect effect of improved fuel economy standards because the same technology that improves fuel economy effectively reduces CO_2 emissions.

There is no doubt that a CAFE standard would clearly produce companion reductions in CO_2 as fuel economy improves, given the technology used to improve fuel economy. However, for the reasons described above EPA believes the better interpretation of section 209(b)(1)(A) is to look at whether the Federal standard is applicable to the same vehicles and air pollutants as the California standards, by considering whether they directly regulate the same vehicles and air pollutants. It is clear that a CAFE standard does not meet this test. While there is a large but non-identical overlap in effect between a CAFE standard and a GHG emission standard with respect to emissions of CO_2, the CAFE standards do not set limits on emissions of CO_2 or any other GHG. There also remain important areas where there is no overlap at all with the California standards, including the regulation of greenhouse gas pollutants other than CO_2. Instead of making an exception to its interpretation of ''applicable Federal standards'' for NHTSA's CAFE fuel economy standards, EPA believes it is more appropriate to apply its traditional interpretation, for all of the reasons discussed above. Therefore, EPA has determined that NHTSA's CAFE standards are not ''applicable Federal standards'' for purposes of this waiver criterion.

2. If EPA Did Consider CAFE Standards as ''Applicable Federal Standards,'' Are the CAFE Standards More Stringent Than California's Greenhouse Gas Emission Standards?

Even if EPA were to take fuel economy standards into consideration as ''applicable Federal standards,'' opponents of the waiver have not met their burden of proof to demonstrate that California's protectiveness determination was arbitrary and capricious. No waiver opponent has demonstrated that existing CAFE standards are more stringent or more protective of the public health and welfare than California's greenhouse gas emission standards.

EPA has consistently stated in prior waiver determinations that California's protectiveness determination must consider the ''applicable Federal standards'' in existence at the time of EPA's waiver decision.[47] Standards in existence at the time of a waiver decision have only included finalized emission standards that EPA has promulgated through its rulemaking process and pursuant to its Clean Air Act authority.

Applying that approach here, if EPA were to take NHTSA's fuel economy standards into account when reviewing California's protectiveness determination, our inquiry would be limited to those final fuel economy standards that are currently in existence at the time of the waiver decision. Although NHTSA is required by the EISA to promulgate more stringent fuel economy standards in the future, the only final fuel economy standard under EISA that is currently in existence is that for the 2011 model year.[48] Additionally, although EPA and the Department of Transportation (DOT) have issued a notice of intent to engage in a joint rulemaking, with NHTSA issuing fuel economy standards under the EISA for the 2012 through 2016 model years and EPA issuing greenhouse gas standards under the CAA for those same model years, those standards are neither proposed nor final at this time.[49] To consider CAFE standards that have been proposed or those standards that may be proposed would be speculative about what standards will be adopted, and EPA has consistently found it inappropriate to engage in that speculation with respect to either EPA's or California's future standards in prior waiver decisions.

Further, it is reasonable to limit our consideration of ''applicable Federal standards'' to those final standards that are in existence, in light of the range of options that remain for California and EPA after a decision on this waiver. If federal greenhouse gas standards are promulgated in the future, and if such standards bring this determination into question, then EPA can revisit this decision at that time. The legislative history of section 209(b) makes clear that Congress considered section 209(b) as including the authority for EPA to withdraw a waiver if circumstances occur in the future that would make this appropriate: ''Implicit in this provision is the right of the [Administrator] to withdraw the waiver at any time [if] after notice and an opportunity for public hearing he finds that the State of California no longer complies with the conditions of the waiver.[50] EPA need not decide now what action might be authorized or appropriate under section 209(b) if EPA adopts greenhouse gas emission standards in the future, as that is best decided when EPA takes such action. Additionally, the possibility that CARB may revise its standards is always present. Such a revision would be considered by EPA in a future waiver proceeding. EPA would then determine whether those changes are within-the-scope of its prior waiver or if a new, full waiver determination would need to be made, as would be required if California

[46] The Supreme Court acknowledged this ''overlap'' between fuel economy and emission standards in *Massachusetts* v. *EPA,* 127 S. Ct. at 1438. (''[T]hat DOT sets mileage standards in no way licenses EPA to shirk its environmental responsibilities. EPA has been charged with protecting the public's 'health' and 'welfare.' 42 U.S.C. 7521(a)(1), a statutory obligation wholly independent of DOT's mandate to promote energy efficiency. *See* Energy Policy and Conservation Act, section 2(5), 89 Stat. 874, 42 U.S.C. 6201(5). The two obligations may overlap, but there is no reason to think the two agencies cannot both administer their obligations and yet avoid inconsistency.'')

[47] See *e.g.,* Authorization of California's Under 25 Horsepower Utility Lawn and Garden Equipment Engine Exhaust Emission Standards (ULGE) (July 5, 1995) at 18. (''CARB's protectiveness determination must be judged on the standards that are in existence at the time EPA makes it authorization determination. However, as CARB correctly states, until EPA's rules become final no changed circumstances exist that affect CARB's protectiveness determination, and that it would be premature to make a protectiveness comparison with non-finalized federal standards.'')

[48] 74 FR 14196 (March 30, 2009).

[49] 74 FR 24007 (May 22, 2009).

[50] S. Rep. No. 403, 90th Cong. 1st Sess. (1967), at 33–34.

decided to increase the stringency of its greenhouse gas standards.

California's greenhouse gas emission standards begin with the 2009 model year and increase in stringency through the 2016 model year. For that same time period, fuel economy standards only exist for the 2009 through 2011 model years. An appropriate comparison between California's greenhouse gas standards and NHTSA's fuel economy standards, then, would compare California's standards for the 2009 and later model years to NHTSA's fuel economy standards for the 2009 through 2011 model years.

In his December 19, 2007 letter notifying California Governor Schwarzenegger that California's waiver request would be denied, former EPA Administrator Johnson stated that the EISA ''establishes an aggressive standard of 35 miles per gallon for all 50 states, as opposed to the 33.8 miles per gallon in California and a patchwork of other states.'' California prepared and documented a technical evaluation comparing federal fuel economy standards to its own standards.[51] Accounting for the differences between the two sets of standards, CARB attempted an ''apples to apples'' comparison of the standards and made several assumptions to that end. For its own standards, CARB assumed its current greenhouse gas regulations—at issue here—were in effect for the 2009 through 2016 model years and that those standards increased in stringency for the 2016 through 2020 model years (its ''Pavley 2'' standards that are not at issue in this waiver proceeding). Because EISA does not set standards, but directs NHTSA to issue standards that increase fuel economy to a minimum of 35 miles per gallon by the 2020 model year, CARB projected that the new CAFE standards would proportionally increase by 3.44 percent each year after the 2011 model year. Also, because EISA allows a fuel economy credit up to 1.2 miles per gallon for use of flexible fuel vehicles (FFVs) that can operate on high-blend ethanol, such as E85, based on manufacturer statements that they would produce large numbers of FFVs, CARB assumed maximum use of that credit. CARB also took into account differences in fleet mix in California and the other 49 states. To compare this range of years of the California greenhouse gas emission standards to the corresponding range of years of EISA fuel economy standards, CARB translated the miles per gallon standards from EISA into greenhouse gas emission rates. The rates of greenhouse gas emission reduction from each set of standards were then compared from 2009 through 2020.[52] CARB found that in California in 2016, its greenhouse gas emission standards would achieve 51.9 million metric tons of greenhouse gas emission reductions compared to 23.7 million metric tons from federal fuel economy standards. By 2020, CARB found 100.5 million metric tons of greenhouse gas emission reductions from its standards compared to 59.5 million metric tons of greenhouse gas emission reductions from the federal fuel economy standards.[53] Both sets of reductions follow a similar pattern because both sets of standards are relatively similar in stringency in the near-term (2009–2011), with California's standards ramping up in the mid-term (2012–2016), just as the proposed EISA standards begin to increase their stringency. While both sets of standards gain stringency in the long-term (2016 and beyond), California found that its standards are more stringent sooner and in the long-term and, furthermore, that its standards are more protective of its public health and welfare because they achieve greater greenhouse gas reductions.

EPA notes that this comparison requires speculation regarding what final CAFE standards will be promulgated by NHTSA for the 2012–2020 model years, and what final GHG standards may be promulgated by CARB for the 2017–2020 model years. If the comparison were truly between final, promulgated standards of California GHG-to-CAFE, it would compare California standards for the 2009 through 2016 model years to the lone NHTSA fuel economy standard for the 2011 model year, and the preexisting standards for the 2009–2010 model years. This highlights that the appropriate approach is to compare standards that are final as of the time of the waiver decision. However, California's approach indicates that its standards are more stringent than federal CAFE standards even if CAFE standards increased in the 2012 through 2016 model years. Therefore, this approach also would indicate that California's standards, reviewing only those standards that are final at this time, are more stringent in the aggregate.

No commenter has presented evidence that questions CARB's claim that its greenhouse gas emission standards are more stringent than EISA. Most commenters opposing the waiver do not focus on the comparative stringency of the two sets of standards, but instead focus on EISA's mandate for more stringent fuel economy standards as undermining the currency of California's protectiveness determination or California's ''need'' for its greenhouse gas emission standards. For example, AIAM has argued that the increased stringency of CAFE standards due to the EISA removes the basis for California's protectiveness determination.[54] Similarly, the Alliance argues that ''CARB erred in a fundamental way when it chose to ignore the impact of the federal CAFE standards generally and EISA's passage in specific on California's outdated protectiveness determination.'' [55] These arguments assume that CAFE standards are ''applicable Federal standards'' and that non-final standards may be taken into consideration at the time of a waiver determination. As explained in detail above, those assumptions are not consistent with EPA's interpretation of the section 209(b)(1)(A) criterion. Notably though, neither argument presents a factually-based analysis of the stringency of California's greenhouse gas emission standards as compared to existing fuel economy standards that undermines California's protectiveness determination.[56] Such an

[51] California Air Resources Board, Comparison of Greenhouse Gas Reductions for the United States and Canada under U.S. CAFE Standards and California Air Resources Board Greenhouse Gas Regulations, February 25, 2008, available at *http://www.arb.ca.gov/cc/ccms/reports/pavleycafe_reportfeb25_08.pdf.*

[52] The 2009 through 2020 model year standards are not a straightforward comparison of California's greenhouse gas standards to EISA standards because the years do not align. The California greenhouse gas standards at issue, here, are for the 2009 and later model years, whereas EISA was enacted in 2007 and mandates standards to reach 35 miles per gallon by the 2020 mode year, but as of yet have only been promulgated for the 2011 model year. The 2009 and 2010 MY federal fuel economy standards were pre-EISA standards. Neither California nor NHTSA has yet promulgated standards for the 2017–2020 model years: California greenhouse gas standards for those years are currently proposed in California (as ''Pavley 2'' standards), as are all the EISA standards from the 2012 through 2015 model years.

[53] California Air Resources Board, Comparison of Greenhouse Gas Reductions for the United States and Canada under U.S. CAFE Standards and California Air Resources Board Greenhouse Gas Regulations, (February 25, 2008), at 13–14.

[54] Association of International Automobile Manufacturers, Inc., EPA–HQ–OAR–2006–0173–9005 at 13–14.

[55] Alliance of Automobile Manufacturers, EPA, HQ–OAR–2006–0173–8994 at 20.

[56] The Alliance's comments received April 6, 2009 state: ''It should be noted that * * * it is also true that the fuel economy improvements required by the California GHG standards are more stringent, overall, for the industry than the CAFE standards in many jurisdictions in which the state GHG standards would apply compared to the CAFE standards. CARB does not disagree with this point. See CARB, Comparison of Greenhouse Gas Reductions for the United States and Canada Under U.S. CAFE Standards and California's Air Resources

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analysis would be necessary for EPA to make a section 209(b)(1)(A) finding, if EPA were to depart from its traditional review of California's protectiveness determination and interpret ''applicable Federal standards'' to include NHTSA's fuel economy standards. As noted below, the Alliance points to an analysis of the relative stringency of the two sets of standards to find that: ''the combined vehicle-fuel program created by the EISA would result in greater life-cycle GHG reductions than the state standards that are the subject of this proceeding by the end of the decade.'' That analysis, however, is flawed for the purpose of this waiver consideration because it speculates as to NHTSA standards that are not yet finalized, or even proposed. Additionally, it infers that California's standards are more protective until 2017.[57]

Based on the above, and recognizing that federal fuel economy standards are not ''applicable Federal standards,'' EPA notes that even if the stringency of CAFE standards are considered in context of the section 209(b)(1)(A) waiver criterion, the opponents of the waiver have not presented sufficient evidence to show that California's protectiveness determination is arbitrary and capricious. No commenter has shown that California's determination was arbitrary and capricious in finding that NHTSA's fuel economy standards are not in the aggregate more protective of human health and welfare than California's greenhouse gas standards, whether one considers just the CARB and NHTSA standards that are currently finalized, or one considers possible future standards that either agency might adopt.

B. How Does EPA Evaluate Impacts on Other States?

Several comments have suggested that EPA should consider the impacts of California's greenhouse gas standards on other states.[58] At present time, thirteen other states and the District of Columbia have already adopted California's greenhouse gas emission standards pursuant to section 177 of the Act.[59] These comments raise two objections concerning other states adoption of California's greenhouse gas emission standards. First, these comments suggest that state-by-state compliance with each state's adopted set of California standards presents an unworkable compliance ''patchwork'' for automobile manufacturers.[60] Second, and related, the comments suggest that enforcement of California's greenhouse gas standards in other states will lead to ''environmental disbenefits'' in those states.[61] EPA takes no position on the merits of either argument because these arguments are outside the scope of our section 209(b)(1) waiver criteria. EPA's evaluation of California's waiver request is limited to the State of California.[62] To the extent that these comments raise issues regarding the environmental impacts of consumer shifts within California they are evaluated below.

C. Is California's Protectiveness Determination Arbitrary and Capricious?

1. Based on EPA's Traditional Analysis, Is California's Protectiveness Determination Arbitrary and Capricious?

As described above, EPA's traditional analysis has been to evaluate California's protectiveness determination by comparing the new California standards to applicable EPA emission standards for the same pollutants.[63] In the context of greenhouse gas emissions this analysis is simple. EPA has already determined that California was not arbitrary and capricious in its determination that the pre-existing California standards for light-duty vehicles and trucks, known as LEV II, is at least as protective as comparable Federal standards, known as the Tier II standards.[64] In the context of the ZEV proceeding, EPA conducted its traditional analysis to compare California's newly enacted ZEV standards to a similar lack of applicable Federal standards. At that time, California found, and EPA deemed reasonable, that the addition of the ZEV standards did not render California's LEV II program, for which a waiver had previously been granted, less protective than the Federal Tier II program. In addressing the Alliance's petition for reconsideration with respect to this issue, EPA stated that ''the words 'standards' and 'in the aggregate' in section 209(b)(1)(A) * * * . at minimum, include all the standards relating to the control of emissions for a category of vehicles (*e.g.* passenger cars, etc.) subject to CARB regulation, particularly where the standards are designed to respond to the same type of pollution.'' [65]

California's greenhouse gas standards are also an addition to its existing LEV II program. Since the greenhouse gas standards add onto California standards that have already been determined to be as least as protective, and since there are no applicable federal greenhouse gas emission standards, the point of comparison, here, is between California's greenhouse gas standards and an absence of EPA greenhouse gas emission standards. Comparing an absence of EPA greenhouse gas emission standards to the enacted set of California greenhouse gas emission standards provides a clearly rational basis for California's determination that the California greenhouse gas emission program will be more protective of human health and welfare than non-existent applicable federal standards. California directly addressed this traditional analysis in its finding that ''[t]here are no comparable federal regulations that specifically require the control of greenhouse gas emissions from motor vehicles.'' [66]

EPA received comments suggesting that this type of traditional comparison is inappropriate, even ''impossible,'' in

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Board Greenhouse Gas Regulations: An Enhanced Assessment, at 8 (February 25, 2008).'' Alliance of Automobile Manufacturers, EPA–HQ–OAR–2006–0173–8994 at 20, note 4.

[57] *Id.*

[58] Association of International Automobile Manufacturers, EPA–HQ–OAR–2006–0173–7176.11, p. 1–2, 24–25; National Automobile Dealers Association, EPA–HQ–OAR–2006–0173–7176.1, EPA–HQ–OAR–2006–0173–8956; NERA Economic Consulting and Sierra Research, EPA–HQ–OAR–2006–0173–9053.1.

[59] New York (6 NY Code, Rules & Regs., Part 218–8.3), Massachusetts (310 Code of Mass. Regs. 7.40(2)(a)(6)), Maryland (Code of Md. Regs. § 26.11.34), Vermont (Vt Air Poll. Ctrl Regs., Subchapter XI, 5–1106(a)(5)), Maine (06 Code of Maine Rules § 127), Connecticut (Conn. Admin. Code § 22a–174–36b), Arizona (18 A.A.C. 2), New Jersey (NJ Admin. Code §§ 7:27–29.13), New Mexico (20 NM Admin. Code, Chapter 2, Part 88), Oregon (Or. Admin. Rules § 340–257), Pennsylvania (36 Pa.B. 7424), Rhode Island (RI Air Poll. Ctrl Reg. 37.2.3), Washington (Wash. Admin. Code § 173.423–090(2), and Washington, DC (DC Law 17–0151) have adopted California's greenhouse gas emission standards. *See also http://www.pewclimate.org/what_s_being_done/in_the_states/vehicle_ghg_standard.cfm*. Four more states, including Florida, Colorado, Utah, and Montana are poised to adopt the standards.

[60] National Automobile Dealers Association, EPA–HQ–OAR–2006–0173–7176.1, EPA–HQ–OAR–2006–0173–8956.

[61] Alliance of Automobile Manufacturers, EPA–HQ–OAR–2006–0173–8994 at 22.

[62] These states and the District of Columbia have acted pursuant to section 177 of the Clean Air Act, which is not relevant to this proceeding, and that any issues commenters have regarding section 177 and state compliance with that statutory provision, is not appropriate for this proceeding. EPA notes that the language of section 209(b(1) refers to the ''State'' in several instances but in no instance does it refer to ''states'' or other areas of the country.

[63] See CAA section 209(b)(2).

[64] 71 FR 78190 (December 28, 2006) and Decision Document for Waiver of Federal Preemption for California Zero Emission Vehicle (ZEV) Standards (December 21, 2006); 68 FR 19811 (April 22, 2003) and Decision Document for Waiver of Federal Preemption for Low Emission Vehicle Amendments (LEV II)(April 11, 2003).

[65] EPA's August 13, 2008 Response to Petition for Administrative Reconsideration of EPA's ZEV Waiver Decision (through the 2011 Model Year) published on December 28, 2006, at 3.

[66] Id. at 13.

the absence of Federal greenhouse gas emission standards.[67] Such an argument is contrary to legislative intent and EPA's practice.[68] This is not the first time that California has enacted emission standards in the absence of Federal standards; in fact, California's pioneering role in setting mobile source emission standards is one reason the waiver provision exists.[69] Given that section 209(b)(1) is designed to allow California to have standards more stringent than Federal standards, it would make little sense to use this provision to prevent California from having such standards where the Federal government has not yet acted. Moreover, in prior decisions EPA has found that such protectiveness determinations by California in the absence of Federal standards were reasonable.[70] Indeed, California standards may be most clearly ''at least as protective'' when they are compared to the absence of Federal emission standards. This commenter further points to the ''tremendous level of current federal activity'' as the primary reason why ''it is impossible for EPA to evaluate how the GHG Regulations will compare with federal regulation in this field.'' While EPA has announced its intention to propose greenhouse gas emission standards, EPA has consistently stated that CARB's protectiveness determination must consider the Federal standards in existence at the time of EPA's waiver decision.[71]

Furthermore, waiting for future federal regulation would be contrary to the purpose of the section 209(b) waiver provision—effectively stalling California's ability to enforce its own program. CARB's protectiveness determination was made on September 23, 2004, at which time there were no federal greenhouse gas standards. CARB's determination, then, correctly compared its standards to the absence of federal emission standards. Since that time, there has been no relevant intervening ''applicable Federal standard.'' [72] Although AIAM points to the *Massachusetts* v. *EPA* decision and Executive Order 13,432, neither of those documents, nor any subsequent actions by the Federal government,[73] constitute final EPA regulation of greenhouse gas emissions for new motor vehicles that could be used as a comparable standard in this waiver proceeding.[74] The current lack of federal greenhouse gas emission standards maintains the factual basis for CARB's September 23, 2004 protectiveness determination. As noted above, if and when greenhouse gas standards are promulgated by EPA in the future, and if such standards bring this determination into question, then EPA can revisit this waiver decision at that time. Accordingly, applying its traditional comparative analysis, opponents of the waiver have not shown flaw or lack of reason in California's protectiveness determination; and we cannot find that California's protectiveness determination is arbitrary and capricious.

2. Is California's Protectiveness Determination Arbitrary and Capricious Based on the Real-World In-Use Effects of California's Greenhouse Gas Standards?

EPA received comments suggesting the need for and appropriateness of applying an alternative interpretation of section 209(b)(1)(A), based on an inquiry into the in-use effect of inclusion of greenhouse gas standards upon the broader motor vehicle emissions program.[75] EPA does not take a position as to the validity of the suggestion that the type of numerical analysis discussed above is insufficient. Noting the legislative history and text of section 209(b)(2), EPA would need a concrete factual basis to examine the in-use effect of California's greenhouse gas standards on its broader LEV II program as compared to the Federal Tier II program. We need not take a position on that matter because to the extent that the in-use effects of the greenhouse gas standards are considered, the waiver opponents do not meet their burden to show that CARB's analysis of the effects is unreasonable.

These comments suggest that consumer effects will cause California's broader LEV II motor vehicle emissions program to be less protective than the Federal Tier II emissions program.[76] In support of this analysis, the Alliance commissioned a study from Sierra Research, NERA Economic Consulting, and Air Improvement Resource, Inc. entitled ''Effectiveness of the California Light Duty Vehicle Regulations as Compared to Federal Regulations,'' which was submitted to EPA on June 15, 2007 (''June 2007 AIR/NERA/Sierra Study'').[77] CARB specifically responded to the June 2007 Study in comments it submitted to the docket on July 24, 2007 (''CARB's July Comments'').[78] Next, the Alliance submitted a response to California's response prepared by NERA Economic Consulting and Sierra Research (''October 2007 NERA/Sierra Study'').[79] Most recently, the Alliance submitted another study produced by NERA Economic Consulting and Sierra Research entitled ''Impacts of the California Greenhouse Gas Emission Standards on Motor Vehicle Sales'' (''April 2009 NERA/Sierra Study'').[80] On this issue, the Alliance also refers to a study published by the Society of Automotive Engineers entitled ''Evaluation of California Greenhouse Gas Standards and Federal Independence and Security Act—Part 2: CO_2 and GHG Impacts'' (''SAE Study'').[81] At the same time, Air Improvement Resource, Inc. has independently submitted comments which include its ''Evaluation of California Greenhouse Gas Standards and Federal Energy Independence and Security Act'' (''March 2009 AIR Study'').[82]

The Alliance has raised this issue before, in its request for reconsideration of EPA's waiver for California's ZEV

[67] Alliance of International Automobile Manufacturers, EPA–HQ–OAR–2006–0173–1455 at 3; Alliance of Automobile Manufacturers, EPA–HQ–OAR–2006–0173–1297 at 2, 5–7, 11–12; National Automobile Dealers Association, EPA–HQ–OAR–0173–1671 at 3.

[68] The waiver provision allows California to ''act as a testing agent for various types of control and the country as a whole will be a beneficiary of this research'' (113 Cong. Rec. 32478 [1967]); ''act as a laboratory for innovation'' (*MEMA I* at 1095). *See* Decision Document for Authorization of State Standards for Utility Lawn and Garden Equipment (ULGE) (July 5, 1995).

[69] California first began regulating motor vehicle emissions in 1957, nearly a decade before Congress enacted the Motor Vehicle Air Pollution Control Act of 1965, which enabled a federal program.

[70] See *e.g.,* Authorization of California's Under 25 Horsepower Utility Lawn and Garden Equipment Engine Exhaust Emission Standards (ULGE) (July 5, 1995).

[71] *Id.* at 18.

[72] See section IV.A., regarding ''applicable Federal standards.''

[73] The Alliance similarly argues that EISA's mandate for reformed CAFE standards renders California's protectiveness determination ''obsolete'' or ''stale.'' Alliance of Automobile Manufacturers, EPA–HQ–OAR–2006–0173–8994 at 21.

[74] Likewise, EPA and DOT's ''Notice of Upcoming Joint Rulemaking To Establish Vehicle GHG Emissions and CAFE Standards'' does not include any final standards which EPA can take into account as an ''applicable Federal standards.''74 FR 24007 (May 22, 2009).

[75] Alliance of Automobile Manufacturers, EPA–HQ–OAR–2006–0173–1297 at 5–12, and EPA–HQ–OAR–2006–0173–8994 at 22.

[76] *Id.*

[77] Sierra Research, Inc., EPA–HQ–OAR–2006–0173–1447, 1447.1–.5.

[78] California Air Resources Board, EPA–HQ–OAR–2006–0173–3601.

[79] NERA Economic Consulting, Inc. and Sierra Research, EPA–HQ–OAR–2006–0173–3651.

[80] NERA Economic Consulting and Sierra Research, EPA–HQ–OAR–2006–0173–9053.

[81] Thomas L. Darlington and Dennis F. Kahlbaum, Evaluation of California Greenhouse Gas Standards and Federal Independence and Security Act—Part 2: CO_2 and GHG Impacts, SAE Paper No. 2008–01–1853 (2008), Alliance of Automobile Manufacturers, EPA–HQ–OAR–2006–0173–8994 at 20, note 44.

[82] Air Improvement Resources, Inc., EPA–HQ–OAR–2006–0173–13662.

standards.[83] In that reconsideration, the Alliance referred to the same June 2007 AIR/NERA/Sierra Study, saying that the California program, as a whole, was not at least as protective of public health and welfare as comparable federal standards. EPA denied the Alliance's request, in particular because the June 2007 AIR/NERA/Sierra Study was produced under the assumption that California's ZEV standards would be in effect until at least 2020 and that California's greenhouse gas standards would also be in effect. As EPA had only granted the ZEV waiver through the 2011 model year and had not granted the greenhouse gas waiver, EPA found that the study was not based upon the proper assumptions for comparing California's standards to federal standards. EPA stated at that time: ''[T]o the extent that the real-world emission effects of CARB's ZEV program (aggregated with its LEV II standards) are relevant, if at all, the Alliance fails to submit sufficiently focused information regarding these programs and their associated effect on emissions. Thus, no basis exists to reconsider EPA's December 2006 waiver decision based on the NERA/Sierra/Air report.'' [84]

In evaluating its greenhouse gas standards, California's protectiveness determination went beyond a simple numerical comparison of its greenhouse gas standards to non-existent federal greenhouse gas standards. Its protectiveness determination was also based upon its own analysis of the impact of its greenhouse gas standards on its larger program. California found that its new greenhouse gas standards would yield not only reductions in greenhouse gas emissions but also a net reduction in criteria pollutant emissions.[85] Therefore, to the extent this analysis is even relevant for an EPA waiver review opponents must present ''clear and compelling'' evidence challenging the reasonableness of this determination and California's analysis.

The June 2007 AIR/NERA/Sierra Study prepared for the Alliance presents a finding that its results ''indicate that the California Program, in the aggregate, is less protective of public health than the Federal Program with respect to emissions of ozone precursors and several other criteria pollutants.'' The study undertook consumer choice modeling to evaluate the effect of the California greenhouse gas emission standards on the new motor vehicle fleet and vehicle miles travelled (VMT) and compare those effects with fleet and VMT conditions were the Federal Program in effect in California. Its results showed that compliance with the California greenhouse gas standards would raise the cost of new motor vehicles in California, which would then lead to higher new vehicle prices, decreased new vehicle sales, increased retention of used vehicles (''scrappage effect''), increased fuel economy which would lead to increased VMT (''rebound effect''), and, finally, increased emissions of ozone precursors and several other criteria air pollutants.

On July 24, 2007, CARB submitted a response to comments received by EPA which specifically addressed the June 2007 AIR/NERA/Sierra Study.[86] First, CARB insisted that such a study should have been presented for consideration during California's rulemaking process and not later during EPA's consideration of California's waiver request. Second, CARB substantively responded to the June 2007 AIR/NERA/Sierra Study and claimed that its protectiveness determination was proper. In sum, CARB objected that the June 2007 AIR/NERA/Sierra Study is inappropriate because it is not focused on the relative stringency of emission standards, but instead presents ''a series of speculative events driven by disputed and unsupported compliance costs that would supposedly result—contrary to experience with previous reduction and automotive regulatory measures—in a substantial reduction in new motor vehicle sales (fleet turnover); and * * * Californians' theoretical desire to drive even more miles than already projected to reach increasingly distant destinations in the face of increasing traffic congestion (rebound effect).'' [87] CARB further critiqued several points of AIR/NERA/Sierra's analysis, including what it viewed as ''grossly overstated * * * highly speculative cost estimates,'' modeling errors, lack of methodological detail, and faulty assumptions. CARB asserted that its staff reviewed similar analyses and had provided its own analyses that are ''more reasonable and historically reliable'' and ''lead to dramatically different outputs.''

NERA/Sierra responded to that critique on October 29, 2007.[88] That document includes specific responses to criticisms raised by CARB and generally defends the integrity of its analyses. NERA/Sierra affirmed its conclusions that CARB's protectiveness determination is not fully supported because it understates or ignores costs, does not consider the combined effects of the ZEV mandate and GHG requirements, and does not assure compliance through technological implementation. As to the specific modeling issues raised by CARB, NERA/Sierra maintained the correctness of its modeling assumptions and estimations with regard to technology cost, fleet turnover, rebound effect, and pollutant emission effect.

NERA/Sierra also submitted an additional study on April 6, 2009, presenting many of the same methodological assertions noted above. Notably, though, this study is less methodologically clear: It does not quantify scrappage or its effects on emissions, assumes technology is applied only to meet federal CAFE

[83] Decision Document for Waiver of Federal Preemption for California Zero Emission Vehicle (ZEV) Standards (December 21, 2006) and EPA's August 13, 2008 Response to Petition for Administrative Reconsideration of EPA's ZEV Waiver Decision (through the 2011 Model Year) published on December 28, 2006.

[84] EPA's August 13, 2008 Response to Petition for Administrative Reconsideration of EPA's ZEV Waiver Decision (through the 2011 Model Year) published on December 28, 2006, at 17–18. That denial further opined: ''In light of the language of section 209(b)(1)(A) and associated legislative history, it may only be necessary to examine the applicable emission limits in determining California's ability to set more stringent standards and pursue pioneering efforts (which may or may not lead to higher costs and associated fleet turnover concerns) under section 209(b)(1)(A). Given the legislative history * * *. EPA would need a concrete basis to examine the ''real world'' or in-use effect of California's standards in comparison to applicable federal standards (in this case, a comparison of LEV II + ZEV versus Tier 2). To require CARB to justify its standards and policy goals within the context of the protectiveness criteria based on waiver opponents' complicated and controversial models that apply assumptions that are themselves controversial, and where there are no corresponding federal standards, raises questions about whether demanding this type of review conflicts with Congress' intent to allow California 'the broadest possible discretion' in fashioning its own motor vehicle program without EPA second-guessing California's policy choices.'' Id. at 12.

[85] California Air Resources Board, EPA–HQ–OAR–2006–0173–0010.107 at 15 (''Taking into account the penetration of 2009 and later vehicles meeting the new standard, the proposed regulation will reduce greenhouse gas emission by an estimated 87,700 CO_2-equivelent tons per day statewide in 2020 and by 155,200 CO_2-equivelent tons per day in 2030. This translates into an 18 percent overall reduction in greenhouse gas emissions from the light duty fleet in 2020 and a 27 percent overall reduction in 2030; Taking into account the penetration of 2009 and later vehicles meeting the new standard, the proposed regulation will reduce upstream emissions of non-methane organic gases (NMOG) by 4.6 tons per day statewide in 2020 and 7.9 tons per day statewide in 2030, and will reduce upstream emissions of NO_X by 1.4 tons per day statewide in 2020 and 2.3 tons per day statewide in 2030. The regulation will provide a criteria pollutant benefit even taking into account possible pollutant increases due to consumer response.'').

[86] California Air Resources Board, EPA–HQ–OAR–2006–0173–3601.

[87] California Air Resources Board, EPA–HQ–OAR–2006–0173–3601 at 8.

[88] NERA Economic Consulting, Inc. and Sierra Research, EPA–HQ–OAR–2006–0173–3651.

standards (and not beyond that level of stringency), and assumes that further compliance is achieved through fleet mix changes combined with restrictions on vehicle availability. It is not clear whether and how ZEV program requirements are included in this study. Most importantly, though, the April 2009 NERA/Sierra Study is outside the scope of this proceeding; it presents ''the effects on motor vehicle sales of the California Standards, assuming that they are implemented in the 13 states that have adopted California's standards.'' [89] That is, the April 2009 NERA/Sierra Study seeks to present the effect of California's greenhouse gas standards on new motor vehicle sales in those 13 states. This is inappropriate because the waiver inquiry is limited to the State of California (as noted above) and, even if this study had been limited to California, it would still be inadequate because it does not connect its findings with regard to depressed vehicle sales to increased criteria pollutant emissions.

Air Improvement Resources, Inc. (''AIR''), who had originally participated in the June 2007 AIR/NERA/Sierra Study but submitted comment independently on April 6, 2009, evaluated California's greenhouse gas standards as compared to EISA ''standards.'' As noted above, this evaluation is not relevant to EPA's section 209(b)(1)(A) inquiry because EISA ''standards'' are not ''applicable Federal standards'' for the purpose of our waiver inquiry. Nor have any fuel economy standards been promulgated beyond the 2011 model year. Those underlying inadequacies render this study unpersuasive, if not entirely irrelevant. However, it is interesting to note that the primary finding of this study is that ''the California program has lower GHG emissions until about 2016–2018.'' [90] AIR also included as an attachment an SAE Paper evaluating impacts on new vehicle fuel economy from California's greenhouse gas standards and EISA ''standards.'' The finding of this paper is that California's greenhouse gas standards will lead to higher fuel economy than EISA ''standards'' until the 2017 model year.[91] The findings of both reports are based on inconsistent assumptions that California's greenhouse gas standards will not become more stringent after the 2016 model year, (because this waiver request ends with the 2016 model year standards) but the federal fuel economy standards will become more stringent even though there are not yet any federal fuel economy standards past the 2011 model year. As stated above, EPA is not including fuel economy standards in its consideration of ''applicable Federal standards.'' But, even if EPA were to engage in that analysis, it can only consider standards in existence at the time of a waiver decision, as stated above. Since no federal fuel economy standards exist yet beyond the 2011 model year, EPA will not make predictions about later year fuel economy standards in order to take them into account here.

As discussed below, EPA has evaluated both sets of analyses (from CARB and NERA/Sierra) and makes note of the following with regard to (1) fleet turnover/delayed scrappage, (2) the rebound effect, and (3) upstream emissions impacts.[92]

a. Fleet Turnover/Delayed Scrappage

The Alliance argues that California's greenhouse gas standards will cause delayed fleet turnover and, thus, increase criteria air pollutant emissions. Delayed fleet turnover results when the prices of new vehicles increase, causing prices of existing vehicles to increase as well. A consumer's decision to scrap an existing vehicle depends upon the trade-off between the value of existing vehicle in its working condition and its scrappage value. Rising prices of existing vehicles lead some consumers to decide to delay scrapping their vehicles. An older vehicle stock on the road results in an increase in criteria air pollution.

In conducting its analysis on consumer behavior impacts in its June 2007 study, NERA/Sierra/AIR evaluated the combined impacts of the California greenhouse gas emission standards and the Zero Emission Vehicle (''ZEV'') rules. It is difficult to discern the total cost per vehicle over various model years of the greenhouse gas versus the ZEV portion of the rules and, therefore, determine how much of the consumer behavior impacts are appropriately attributable to the greenhouse gas standards. Thus, it is difficult to undertake a direct comparison of the NERA/Sierra/Air and CARB studies. According to NERA/Sierra/AIR, as a result of price increases associated with the greenhouse gas and ZEV rules in 2020, they project that new vehicle sales in California will fall by approximately 130,000 vehicles. In addition, the number of vehicles in the fleet prior to the effective date of the ZEV and GHG regulations (*i.e.,* pre-2009 model year vehicles) is more than 250,000 greater in 2020 than would otherwise be the case under a federal program.

CARB, on the other hand, only looks at the economic impacts of the California greenhouse gas standards, independent of the ZEV requirements. Without the ZEV requirements, CARB estimates that California's greenhouse gas standards will result in an increase in new vehicle prices of approximately $1,000 per vehicle (*i.e.,* $1,064 for passenger vehicles, small trucks and sport utility vehicles (SUVs) and $1,029 for certain medium-duty trucks/SUVs).[93] Using a consumer choice model, CARBITS, CARB estimated new vehicle sales from California standards would increase in the near-term, resulting in accelerated fleet turnover, but see declines in fleet turnover in the longer-term, with a loss of vehicle sales of roughly 97,000 in 2020. By 2020, CARB estimates that lost vehicle sales would lead to delayed fleet turnover. The potential increase in ozone precursor emission in California in out years (*i.e.,* 2020) from delayed fleet turnover is about 2.5 tons/day. CARB estimates that those ''disbenefits'' of fleet turnover delay are more than offset by faster turnover in the early years of the California standard and reductions in emissions associated with fuel production. The more recent April 2009 NERA/Sierra study projects the impacts of the California GHG standards on new motor vehicle sales in the thirteen states that have adopted the California standards. Since the study only examines the impacts on new vehicle sales, it does not provide estimates of ozone precursor impacts of California standards.

b. The ''Rebound Effect''

The Alliance contends that criteria air pollutant emissions will increase due to

[89] NERA Economic Consulting and Sierra Research, EPA–HQ–OAR–2006–0173–9053 at E–1.

[90] Air Improvement Resources, Inc., EPA–HQ–OAR–2006–0173–13662 at 2. Yet this analysis presumes the promulgation of fuel economy standards that have not yet been promulgated and does not accordingly presume the promulgation of further greenhouse gas standards by California, despite the fact that the Pavley law in California makes such further standards a significant possibility.

[91] Air Improvement Resources, Inc., EPA–HQ–OAR–2006–0173–13662.

[92] EPA's role in reviewing California's waiver request is limited to finding whether opponents have shown that California's protectiveness determination is arbitrary and capricious. In making its protectiveness determination, CARB included these analyses and the studies noted above have included similar analyses based on diverging assumptions. EPA has evaluated these analyses to demonstrate that CARB's protectiveness determination was not arbitrary and capricious. This evaluation is separate and distinct from any analysis that EPA would conduct in promulgating its own regulation. Nothing in this evaluation should be construed as an endorsement of CARB's or any other analysis or any particular assumption they rely upon.

[93] California Air Resources Board, EPA–HQ–OAR–2006–0173.0010.116.

the so-called vehicle ''rebound effect.'' The rebound effect for vehicle fuel economy is defined as the increase in vehicle travel resulting from a decrease in the fuel cost per vehicle miles as a consequence of an increase in fuel economy. It is projected that increasing fuel efficiency lowers the effective cost of driving to the consumer, which results in an increase in vehicle usage (holding all other factors constant). NERA developed their own econometric estimate of the California rebound effect—17%—based on California vehicle inspection data from 1983–2003. In addition, NERA re-estimated a CARB-sponsored study on the rebound effect by Small & Van Dender and NERA found the long-run rebound effect in California to be roughly 13%.

In contrast, CARB used two types of analysis to evaluate the impact of the proposed regulations on changes in vehicle miles traveled: Econometric work by Small and Van Dender and travel demand modeling (Southern California Association of Governor's (SCAG)). The study by Small & Van Dender allowed the rebound effect to vary based on changes in income and congestion. In addition, the Small & Van Dender study also analyzed the impact of higher vehicle costs on VMT. Based on the econometric modeling, projected California incomes and transportation conditions, Small and Van Dender estimated a dynamic rebound effect of approximately 3% for the State of California in 2020. A major difference between the NERA and Small and Van Dender study was the way nominal income was converted to real income. NERA tried to approximate state cost of living adjustments, but had to modify metropolitan cost of living adjustments; Small and Van Dender used the national consumer price index. Based on the difference in income calculation, NERA found that income was no longer statistically significant in explaining changes in the rebound effect. Therefore, they removed this term from their model. California also used the Southern California Association of Governor's (SCAG) travel demand model to project changes in demand travel based on declining vehicle operating costs in the context of the transportation system in the L.A. South Coast Air Basin. In contrast to the econometric study, the travel demand modeling takes into account the available transportation infrastructure. CARB examined the emission impacts of changes in both the amount and the speed of motor vehicle travel, relative to the cost of gasoline per mile traveled. Based on the vehicle classes affected by the proposed GHG regulation, the results from SCAG indicate an elasticity of VMT to fuel cost (*i.e.,* a rebound effect) of roughly 4 percent in 2020.

c. Upstream Emissions Impacts

California's greenhouse gas standards also will influence the amount of fuel going through the petroleum marketing and distribution infrastructure in California. This, in turn, will reduce the ''upstream'' criteria air pollutants from transportation, spills, and other events associated with the infrastructure. There were large differences between the CARB and NERA/Sierra estimates of upstream emissions. NERA, focusing on fuel delivery trucks and transit distances, characterized CARB's estimates as significantly flawed. However, both estimated upstream emission reductions of ROG and NO_X, with CARB estimating a 6 ton per day reduction and NERA estimating a 1.1–1.5 ton per day reduction. The table below presents the rivaling estimates presented by the CARB and NERA/Sierra analyses.

	CARB	NERA
Fleet Turnover/Scrappage Effect.	Accelerated fleet turnover in near-term; smaller delayed fleet turnover in out years (*e.g.,* 2020).	Delayed fleet turnover in near term; larger delayed fleet turnover in out years (*e.g.,* 2020).
Rebound Effect	3% in 2020	17% in 2003, 13% in 2007.
Upstream Emissions	6 tons/day reduction in ROG+NOx	1.1–1.5 tons/day reduction in ROG+NOx.

Additionally, as with our analysis of the AIR/NERA/Sierra analysis in the context of the ZEV waiver reconsideration, we note that the study included a presumption that the ZEV standards would be in effect until at least 2020, and that this assumption appears to have a significant effect on other assumptions in the analysis. However, EPA explicitly declined to approve its waiver for California's ZEV standards beyond the 2011 model year, based in part on concerns that echoed comments from the Alliance. This makes the AIR/NERA/Sierra analysis an insufficient analysis to base a denial of California's waiver request.

In evaluating the studies prepared by AIR/NERA/Sierra in light of California's protectiveness determination, EPA takes important note of CARB's response. As stated above, while CARB disagrees that these studies are properly before EPA in the waiver proceeding, it points out that even if it is proper for EPA to consider the AIR/NERA/Sierra studies, they do not provide a basis for finding that California's protectiveness determination was arbitrary and capricious. CARB maintains that the Alliance has made no attempt to show that CARB's analyses are irrational, which CARB states waiver opponents must make given the ''arbitrary and capricious'' standard.

EPA agrees that to make a section 209(b)(1)(A) finding, it is not enough for waiver opponents to provide competing analyses that they claim are based on a rational set of assumptions. Rather, they must show that California's analysis, or the assumptions California relied on to support its protectiveness determination were arbitrary and capricious. Competing analyses, each based on rational assumptions, are not sufficient to deny a waiver.[94]

As previously stated, EPA does not need to decide the validity of the suggestion that the traditional numerical analysis is insufficient and that EPA must also consider the in-use effects of the standards. Given the legislative history and text of section 209(b)(2), EPA would need a concrete factual basis to examine the in-use effect of California's greenhouse gas standards on its broader LEV II program as compared to the Federal Tier II program. We need not take a position on that matter because the waiver opponents do not meet their burden to show that CARB's analysis of the in-use effects is arbitrary and capricious.[95] Rather, they present

[94] EPA's August 13, 2008 Response to Petition for Administrative Reconsideration of EPA's ZEV Waiver Decision (through the 2011 Model Year) published on December 28, 2006, at 17, note 25.

[95] To the extent that an analysis of the in-use effects of California's greenhouse gas standards may be appropriate, then such analysis properly includes consideration of the upstream emission reduction impacts identified and linked to the standards. A holistic examination of the in-use effects of a regulation should naturally include those effects that have a plausible connection to the standards, including such consequences as indirect upstream emission reductions. The March 6, 2008 Denial stated that California may otherwise have independent authority to regulate stationary sources and therefore there was no basis to include emission reductions from such sources as part of a mobile source rulemaking. However, EPA believes that the issue under section 209(b)(1)(A) is whether

rivaling analyses—each making different assumptions so that the differences in findings can be reduced to differences in assumptions. EPA finds that the Alliance has not met its burden of proof that the greenhouse gas regulations undermine California's previous LEV II and ZEV protectiveness determinations or that California was arbitrary and capricious in its greenhouse gas protectiveness determination.

EPA, therefore, finds that opponents of the waiver have not presented clear and compelling evidence that CARB was arbitrary and capricious in finding that the real-world effect of its standards ''in the aggregate'' would not lead to greater emissions of pollutants than the federal program.

D. Section 209(b)(1)(A) Conclusion

Based on the record before me, I cannot find that CARB was arbitrary and capricious in its finding that the California motor vehicle emission standards including the greenhouse gas standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.

V. Does California Need Its Standards To Meet Compelling and Extraordinary Conditions?

Under section 209(b)(1)(B) of the Act, I cannot grant a waiver if I find that California ''does not need such State standards to meet compelling and extraordinary conditions.'' EPA has traditionally interpreted this provision as considering whether California needs a separate motor vehicle program to meet compelling and extraordinary conditions. However in the March 6, 2008 Denial, EPA limited this interpretation to California's motor vehicle standards that are designed to address local or regional air pollution problems. EPA determined that the traditional interpretation was not appropriate for standards designed to address a global air pollution problem and its effects and that it was appropriate to address such standards separately from the remainder of the program. EPA then proceeded to find that California did not need such standards to meet compelling and extraordinary conditions. The interpretation adopted in the March 6, 2008 Denial is now before me for reconsideration.

A. Basis of March 6, 2008 Denial

In the March 6, 2008 Denial, EPA provided its reasoning for changing its long-standing interpretation of this provision, as it pertains to California standards designed to address global air pollution. EPA described its long-standing interpretation in some detail, stating that:

> Under this approach EPA does not look at whether the specific standards at issue are needed to meet compelling and extraordinary conditions related to that air pollutant. For example, EPA reviewed this issue in detail with regard to particulate matter in a 1984 waiver decision.[96] In that waiver proceeding, California argued that EPA is restricted to considering whether California needs its own motor vehicle program to meet compelling and extraordinary conditions, and not whether any given standard is necessary to meet such conditions. Opponents of the waiver in that proceeding argued that EPA was to consider whether California needed these PM standards to meet compelling and extraordinary conditions related to PM air pollution.
>
> The Administrator agreed with California that it was appropriate to look at the program as a whole in determining compliance with section 209(b)(1)(B). One justification of the Administrator was that many of the concerns with regard to having separate state standards were based on the manufacturers' worries about having to meet more than one motor vehicle program in the country, but that once a separate California program was permitted, it should not be a greater administrative hindrance to have to meet further standards in California. The Administrator also justified this decision by noting that the language of the statute referred to ''such state standards,'' which referred back to the use of the same phrase in the criterion looking at the protectiveness of the standards in the aggregate. He also noted that the phrase referred to standards in the plural, not individual standards. He considered this interpretation to be consistent with the ability of California to have some standards that are less stringent than the federal standards, as long as, per section 209(b)(1)(A), in the aggregate its standards were at least as protective as the federal standards.
>
> The Administrator further stated that in the legislative history of section 209, the phrase ''compelling and extraordinary circumstances'' refers to ''certain general circumstances, unique to California, primarily responsible for causing its air pollution problem,'' like the numerous thermal inversions caused by its local geography and wind patterns. The Administrator also noted that Congress recognized ''the presence and growth of California's vehicle population, whose emissions were thought to be responsible for ninety percent of the air pollution in certain parts of California.'' [97] EPA reasoned that the term compelling and extraordinary conditions ''do not refer to the levels of pollution directly.'' Instead, the term refers primarily to the factors that tend to produce higher levels of pollution—''geographical and climatic conditions (like thermal inversions) that, when combined with large numbers and high concentrations of automobiles, create serious air pollution problems.'' [98]

The Administrator summarized that under this interpretation the question to be addressed in the second criterion is whether these ''fundamental conditions'' (*i.e.* the geographical and climate conditions and large motor vehicle population) that cause air pollution continued to exist, not whether the air pollution levels for PM were compelling and extraordinary, or the extent to which these specific PM standards will address the PM air pollution problem.[99]

However in the March 6, 2008 Denial, EPA limited this interpretation to California's motor vehicle standards that are designed to address local or regional air pollution problems. EPA determined that the traditional interpretation was not appropriate for standards designed to address a global air pollution problem and its effects.[100]

With respect to a global air pollution problem like elevated concentrations of greenhouse gases, EPA's March 6, 2008 Denial found that the text of section 209(b)(1)(B) was ambiguous and does not limit EPA to this prior interpretation. In addition, EPA noted that the legislative history supported a decision to ''examine the second criterion specifically in the context of global climate change.'' The legislative history:

> [I]ndicates that Congress was moved to allow waivers of preemption for California motor vehicle standards based on the particular effects of local conditions in California on the air pollution problems in California. Congress discussed ''the unique problems faced in California as a result of its climate and topography.'' H.R. Rep. No. 728, 90th Cong. 1st Sess., at 21 (1967). See also Statement of Cong. Holifield (CA), 113 Cong. Rec. 30942–43 (1967). Congress also noted the large effect of local vehicle pollution on such local problems. See, *e.g.,* Statement of Cong. Bell (CA) 113 Cong. Rec. 30946. In particular, Congress focused on California's

the indirect reductions of ozone pollutants from stationary sources created by the greenhouse gas emission standards for motor vehicles, can reasonably be considered by California in its determination that its standards are as protective of public health and welfare as applicable federal standards. Given that the effects are reasonably related to the regulations, if it is appropriate to consider in-use effects then it was not arbitrary and capricious for California to include such effects in this analysis.

[96] 49 FR 18887 (May 3, 1984).

[97] *Id.* at 18890.

[98] 73 FR 12156, 12159–60 (March 6, 2008).

[99] 73 FR at 12159–60.

[100] EPA recently reaffirmed that the traditional interpretation still applied for motor vehicle standards designed to address air pollution problems that are local or regional in nature. 71 FR 78190, 78192 (December 28, 2008); *see also* 71 FR 78190 and Decision Document for Waiver of Federal Preemption for California Zero Emission Vehicle Standards, at 34.

smog problem, which is especially affected by local conditions and local pollution. See Statement of Cong. Smith (CA) 113 Cong. Rec. 30940–41 (1967); Statement of Cong. Holifield (CA), id. at 30942. See also, *MEMA I,* 627 F. 2d 1095, 1109 (DC Cir., 1979) (noting the discussion of California's ''peculiar local conditions'' in the legislative history). Congress did not justify this provision based on pollution problems of a more national or global nature in justifying this provision.[101]

Relying on this, and without any further significant discussion of either congressional intent or how this new approach properly furthered the goals of section 209(b), EPA determined that it was appropriate to:

> [R]eview California's GHG standards separately from the remainder of its motor vehicle emission control program for purposes of section 209(b)(1)(B). In this context it is appropriate to give meaning to this criterion by looking at whether the emissions from California motor vehicles, as well as the local climate and topography in California, are the fundamental causal factors for the air pollution problem—elevated concentrations of greenhouse gases—apart from the other parts of California's motor vehicle program, which are intended to remediate different air pollution concerns.

EPA then proceeded to apply this interpretation to the GHG standards at issue in this waiver proceeding, and found that California did not need the GHG standards under this interpretation. Having limited the meaning of this provision to situations where the air pollution problem was local or regional in nature, EPA found that California's greenhouse gas standards do not meet this criterion. EPA found that the elevated concentrations of greenhouse gases in California are similar to concentrations elsewhere in the world, and that local conditions in California such as the local topography and climate and the number of motor vehicles in California are not the determinant factors causing the elevated GHG concentrations found in California and elsewhere. Thus, the March 6, 2008 Denial found that California did not need its GHG standards to meet compelling and extraordinary conditions, and the waiver was denied.

EPA also considered an alternative interpretation, where EPA would consider ''the effects in California of this global air pollution problem in California in comparison to the rest of the country, again addressing the GHG standards separately from the rest of California's motor vehicle program.'' Under this alternative interpretation, EPA considered whether the impacts of global climate change in California were significant enough and different enough from the rest of the country such that California could be considered to need its greenhouse gas standards to meet compelling and extraordinary conditions. EPA determined that the waiver should be denied under this alternative interpretation as well.

B. Should EPA Review This Criterion Based on the Need for California's Motor Vehicle Program or the Need for the GHG Standards?

The essential first question to resolve in addressing whether California needs ''such State standards to meet compelling and extraordinary conditions'' is whether it is appropriate for EPA to evaluate this criterion based on California's need for its motor vehicle program as a whole, or to evaluate only the particular standards being addressed in this waiver proceeding.

1. Comments Supporting a Review of the Entire Program

In its initial waiver request, CARB restates its need for its own engine and vehicle programs to meet serious air pollution problems. It notes that the relevant inquiry is whether California needs its own emission control program as opposed to the need for any given standard as necessary to meet compelling and extraordinary conditions. CARB notes that in prior waivers the Administrator has determined that:

> ''[C]ompelling and extraordinary conditions'' does not refer to levels of pollution directly, but primarily to the factors that tend to produce them: geographical and climatic conditions that, when combined with large numbers and high concentrations of automobiles create serious air pollution problems.''

In its initial waiver request letter, CARB stated:

> California, the South Coast and San Joaquin Air basins in particular, continues to experience some of the worst air quality in the nation. California's ongoing need for dramatic emission reductions generally and from passenger vehicles specifically is abundantly clear from its recent adoption of state implementation plans for the South Coast and other California air basins. The unique geographical and climatic conditions, and the tremendous growth in the vehicle population and use which moved Congress to authorize California to establish separate vehicle standards in 1967, still exist today.[102]

CARB notes that these conditions have not changed to warrant a change in confirmation by EPA and that the opponents of the waiver bear the burden on showing why California no longer has a compelling need, informed by its own circumstances and benefits that would accrue to it and other states.

EPA also received comment that the *Massachusetts* v. *EPA* holding suggests that EPA should treat greenhouse gases just like all other air pollutants when evaluating a section 209(b) waiver request for greenhouse gases. These comments suggest that once the Supreme Court clarified that greenhouse gases are Clean Air Act air pollutants, there was no room left to distinguish greenhouse gases from other air pollutants when evaluating waiver requests under section 209(b). These comments suggest that EPA ought not to treat elevated concentrations of greenhouse gases as an air pollution problem different from California's traditional air pollution problems. Likewise, the comments suggest, greenhouse gas pollutants should be treated just like other air pollutants which give rise to the need for California's motor vehicle emission program, and, therefore, be subject to EPA's traditional section 209(b)(1)(B) analysis.

Several commenters suggest that review of California's need for its motor vehicle emissions program as a whole is not only appropriate but is mandated by the statute.

2. Comments Supporting a Review of the GHG Standards Separately

Several commenters opposing the GHG waiver request have advocated that EPA should review California's GHG standards separately under the ''compelling and extraordinary conditions'' criterion. Essentially, this would require that EPA's determination be based on California's need for GHG standards in isolation of its need for its own motor vehicle emissions program.

These commenters state that the statute requires a linkage between the compelling and extraordinary conditions and the particular standards that California wishes to enforce, and that a set of standards that cannot be linked to the compelling and extraordinary conditions cannot be said to be needed to meet such conditions. The commenters note that the statute refers to ''standards''—not to a ''program''—and that such an approach would shield regulations that would not meet the criterion from any review simply by referring to other regulations that do meet the criterion. Moreover, they state that the need for such standards must be based on the particular characteristics (topography, photochemistry) that make California's conditions compelling and

[101] 73 FR at 12161.

[102] California Air Resources Board, EPA–HQ–OAR–2006–0173–0004.1 at 27.

extraordinary, whereas global climate change (and, thus, control of GHGs) is not related to such conditions.

Included among the comments suggesting that section 209(b) was intended to allow California to address local air pollution problems and not global environmental issues like climate change was an argument that the phrase ''need for such State standards to meet compelling and extraordinary conditions'' is unambiguous.[103] That lack of ambiguity, according to these comments, compels the conclusion that global warming is not the type of condition California was meant to address with its motor vehicle emissions program. These commenters further suggest that the intent of Congress was to allow California the ability to set its own standards to address the state's unique local air pollution problems and ''scientific evidence confirms that California's temperature trends are neither unique nor particularly distinct from those of at least a dozen other States.''

3. Decision

After reviewing the comments and the March 6, 2008 Denial, I believe the better approach is to review California's need for its new motor vehicle emissions program as a whole to meet compelling and extraordinary conditions, and not to apply this criterion to specific standards, or to limit it to standards designed to address only local or regional air pollution problems. The traditional approach to interpreting this provision is the best approach for considering a waiver for greenhouse standards, as well as a waiver for standards designed to address local or regional air pollution problems.[104] Therefore, I believe the interpretation that was applied in the March 6, 2008 Denial should be rejected and no longer be followed.

This traditional interpretation is the most straightforward reading of the text and legislative history of section 209(b). Congress decided in 1977 to allow California to promulgate individual standards that are not as stringent as comparable federal standards, as long as the standards are ''in the aggregate, at least as protective of public health and welfare as applicable federal standards.'' This decision by Congress requires EPA to allow California to promulgate individual standards that, in and of themselves, might not be considered needed to meet compelling and extraordinary circumstances, but are part of California's overall approach to reducing vehicle emissions to address air pollution problems.

EPA is to determine whether California's determination is arbitrary and capricious under section 209(b)(1)(A), and is to determine whether California does not need ''such State standards'' to meet compelling and extraordinary conditions. The natural reading of these provisions leads EPA to consider the same group of standards that California considered in making its protectiveness determination. While the words ''in the aggregate'' are not specifically applicable to section 209(b)(1)(B), it does refer to the need for ''such State standards,'' rather than ''each State standard'' or otherwise indicate a standard-by-standard analysis.

In addition, EPA's March 6, 2008 Denial determined that this provision was appropriately interpreted to consider California's standards as a group for standards designed to address local or regional air pollution problems, but should be interpreted in the opposite fashion for standards designed to address global air pollution problems. The text of the provision, however, draws no such distinction, and provides no indication other than Congress intended a single interpretation for this provision, not one that varied based on the kind of air pollution problem at issue.

The March 6, 2008 Denial considered the legislative history, and determined that Congress was motivated by concern over local conditions in California that lead to local or regional air pollution problems. From this, EPA determined that Congress intended to allow California to address these kinds of local or regional air pollution problems, but no others. In effect, EPA inferred from the discussion in the legislative history that Congress intended to limit California's authority in this way, and to prohibit a waiver for California standards aimed at global air pollution problems.

This ignores the main thrust of the text and legislative history of section 209(b), and improperly reads too much into an absence of discussion of global air pollution problems in the legislative history. The structure of section 209, both as adopted in 1967 and as amended in 1977, is notable in its focus on limiting the ability of EPA to deny a waiver, and thereby preserves discretion for California to construct its motor vehicle program as it deems appropriate to protect the health and welfare of its citizens. The legislative history indicates Congress quite intentionally restricted and limited EPA's review of California's standards, and its express legislative intent was to ''provide the broadest possible discretion [to California] in selecting the best means to protect the health of its citizens and the public welfare.'' [105] The DC Circuit recognized that ''[t]he history of the congressional consideration of the California waiver provision, from its original enactment up through 1977, indicates that Congress intended the State to continue and expand its pioneering efforts at adopting and enforcing motor vehicle emission standards different from and in large measure more advanced than the corresponding federal program. In short, to act as a kind of laboratory for innovation. * * * For a court [to limit California's authority] despite the absence of such an indication would only frustrate the congressional intent.'' [106]

In this context, it is fully consistent with the expressed intention of Congress to interpret section 209(b)(1)(B) the same way both for standards designed to address local and regional air pollution problems, and standards designed to address global air pollution problems. Congress intended to provide California the broadest possible discretion to develop its motor vehicle emissions program. Neither the text nor the legislative history of section 209(b) indicates that Congress intended to limit this broad discretion to a certain kind of air pollution problem, or to take away all discretion with respect to global air pollution problems.[107] In

[103] This comment, suggesting that the ''need for such State standards to meet compelling and extraordinary conditions,'' is made under Step 1 of the test established under *Chevron, USA., Inc.* v. *NRDC.*

[104] The traditional interpretation of section 209(b)(1)(B) is certainly not ''unambiguous precluded'' by the language of the statute. See *Entergy Corp.* v. *Riverkeeper, Inc.,* 129 S.Ct. 1498 (2009)(''That view governs if it is a reasonable interpretation of the statute—not necessarily the only possible interpretation, nor even the interpretation deemed most reasonable by the courts. *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 843–844 (1984).'') (''It seems to us, therefore, that the phrase ''best available,'' even with the added specification ''for minimizing adverse environmental impact,'' does not unambiguously preclude cost-benefit analysis.''). *Carrow* v. *Merit Systems Protection Board,* 564 F.3d 1359 (Fed. Cir. 2009) (''[W]e are obligated to give controlling effect to [agency's] interpretation if it is reasonable and is not contrary to the unambiguously expressed intent of Congress'', citing *Entergy Corp.*).

[105] H.R. Rep. No. 294, 95th Cong., 1st Sess. 301–302 (1977). *See MEMA,* 627 F. 2d at 1110–11.

[106] *MEMA,* 627 F. 2d at 1111.

[107] This broad interpretation of section 209(b) is similar to the broad reading the Court provided to section 302(g) of the Clean Air Act when it held that the term ''air pollutant'' included greenhouse gases, rejecting among other things the argument that Congress limited the term to apply only to certain kinds of air pollution. *Massachusetts* v. *EPA,* 549 U.S. 497, 532 footnote 26.

addition, applying the traditional interpretation to greenhouse gas standards does not change the basic nature of the compromise established by Congress—California could act as the laboratory for the nation with respect to motor vehicle emission control, and manufacturers would continue to face just two sets of emissions standards—California's and EPA's.

This interpretation is directly in line with the purpose of Congress, as compared to the interpretation adopted in the March 6, 2008 Denial. The 2008 interpretation relied on the discussion in the legislative history of local conditions in California leading to air pollution problems like ozone. While this was properly read to support the view that this provision should be interpreted to address California's need for a motor vehicle program as a whole, the March 6, 2008 Denial went further and inferred that by discussing such local conditions, Congress also intended to limit California's discretion to only these kinds of local or regional air pollution problems. The March 6, 2008 Denial pointed to no particular language in the legislative history or the text of section 209(b) indicating such, instead, congressional intent to limit California's discretion was inferred from the discussion of local conditions. However, basing a limitation on such an inference is not appropriate given the express indication that Congress intended to provide California the ''broadest possible discretion'' in selecting the best means to protect the health of its citizens and the public welfare.

The text of section 209(b) and the legislative history, when viewed as a whole, leads me to conclude that the interpretation adopted in the March 6, 2008 Denial should be rejected. The better way to interpret this provision is to apply the traditional interpretation to the evaluation of California's greenhouse gas standards for motor vehicles. If California needs a separate motor vehicle program to address the kinds of compelling and extraordinary conditions discussed in the traditional interpretation, then Congress intended that California could have such a program. Congress also intentionally provided California the broadest possible discretion in adopting the kind of standards in its motor vehicle program that California determines are appropriate to address air pollution problems that exist in California, whether or not those problems are local or regional in nature, and to protect the health and welfare of its citizens. The better interpretation of the text and legislative history of this provision is that Congress did not intend this criterion to limit California's discretion to a certain category of air pollution problems, to the exclusion of others. In this context it is important to note that air pollution problems, including local or regional air pollution problems, do not occur in isolation. Ozone and PM air pollution, traditionally seen as local or regional air pollution problems, occur in a context that to some extent can involve long range transport of this air pollution or its precursors. This long-range or global aspect of ozone and PM can have an impact on local or regional levels, as part of the background in which the local or regional air pollution problem occurs. As discussed later, the effects of global concentrations of greenhouse gases can have an impact on local ozone levels. This context for air pollution problems supports the view that Congress did not draw such a line between the types of air pollution problems under this criterion, and that EPA should not implement this criterion in a narrow way restricting how California determines it should develop its motor vehicle program to protect the health and welfare of its citizens.[108]

This approach does not make section 209(b)(1)(B) a nullity, as some have suggested. EPA must still determine whether California does not need its motor vehicle program to meet the compelling and extraordinary conditions discussed in the legislative history. If that is the case, then a waiver would be denied on those grounds. As discussed below, that is not the case at this point, even though conditions in California may one day improve such that it no longer has the need for a separate motor vehicle program. The statute contemplates that such improvement is possible. In addition, the opponents of a waiver always have the ability to raise their legal, policy, and other concerns in the State administrative process, or through judicial review in State courts.

[108] *See Massachusetts* v. *EPA,* ''While the Congresses that drafted section 202(a)(1) might not have appreciated the possibility that burning fossil fuels could lead to global warming, they did understand that without regulatory flexibility, changing circumstances and scientific developments would soon render the Clean Air Act obsolete. The broad language of section 202(a)(1) reflects an intentional effort to confer the flexibility necessary to forestall such obsolescence. See *Pennsylvania Dept. of Corrections* v. *Yeskey,* 524 U.S. 206, 212 (1998) (''[T]he fact that a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth'' (internal quotation marks omitted)). Because greenhouse gases fit well within the Clean Air Act's capacious definition of ''air pollutant,'' we hold that EPA has the statutory authority to regulate the emission of such gases from new motor vehicles.'' 549 U.S. 497 at 532.

Congress, however, provided EPA a much more limited role under section 209(b) in considering objections raised by opponents of a waiver.

For these reasons, I believe that the better approach for analyzing the need for ''such State standards'' to meet ''compelling and extraordinary conditions'' is to review California's need for its program, as a whole, for the class or category of vehicles being regulated, as opposed to its need for individual standards.

Having adopted this interpretation of section 209(b)(1)(B), I apply it below to determine whether EPA can find that California does not need its motor vehicle program to meet compelling and extraordinary conditions. Given the basis for EPA's March 6, 2008 Denial and the considerable debate regarding the permissible interpretations of this provision, EPA has also evaluated this criterion reviewing the greenhouse gas standards separately—using the two interpretations discussed in the March 6, 2008 Denial. In either case, EPA also cannot deny California's request for a waiver based on a finding that California does not need such standards to meet compelling and extraordinary circumstances.

C. Does California Need Its Motor Vehicle Program To Meet Compelling and Extraordinary Conditions?

As discussed above, the better interpretation of this criterion, adopted herein, is the traditional approach of evaluating California's need for a separate program to meet compelling and extraordinary conditions. Applying this approach, with due deference to California, I cannot deny the waiver.

CARB has repeatedly demonstrated the need for its motor vehicle program to address compelling and extraordinary conditions in California. In its Waiver Request letter, CARB stated:

California—the South Coast and San Joaquin Air basins in particular—continues to experience some of the worst air quality in the nation. California's ongoing need for dramatic emission reductions generally and from passenger vehicles specifically is abundantly clear from its recent adoption of state implementation plans for the South Coast and other California air basins.[109] The unique geographical and climatic conditions, and the tremendous growth in the vehicle population and use which moved Congress to

[109] See *e.g.* Approval and Promulgation of State Implementation Plans; California—South Coast, 64 FR 1770, 1771 (January 12, 1999). See also 69 FR 23858, 23881–90 (April 30, 2004) (designating 15 areas in California as nonattainment for the federal 8-hour ozone national ambient air quality standard).

authorize California to establish separate vehicle standards in 1967, still exist today.[110]

CARB notes in its July 14, 2007 comments that it testified at EPA's earlier hearings on this waiver request that ''since nothing has changed in the few months since EPA last easily made this determination [regarding the need for the motor vehicle emission program] on December 28, 2006 (71 FR 78190), and since California still has the ''geographical and climatic conditions that, when combined with the large numbers and high concentrations of automobiles, create serious pollution problems,'' (49 FR at 18890 (citing legislative history)), this is the end of a proper and legal EPA analysis of the extraordinary and compelling conditions waiver prong.'' [111]

EPA has not received any adverse comments suggesting that California no longer needs a separate motor vehicle emissions program to address the various conditions that lead to serious and unique air pollution problems in California.

Based on the record, I am unable to identify any change in circumstances or any evidence to suggest that the conditions that Congress identified as giving rise to serious air quality problems in California no longer exist. Therefore, using the traditional approach of reviewing the need for a separate California program to meet compelling and extraordinary conditions, I cannot deny the waiver based on this criterion.

D. Does California Need Its Motor Vehicle GHG Standards To Meet Compelling and Extraordinary Conditions?

As discussed above, EPA has also evaluated this criterion under two alternative approaches, reviewing the greenhouse gas standards separately using the two interpretations discussed in the March 6, 2008 Denial. While recognizing that they are not the interpretations adopted here by EPA, this section discusses the Agency's consideration of these alternative interpretations.

1. Are California's GHG Standards Designed in Part To Address an Air Pollution Problem That Is Local or Regional in Nature?

In the March 6, 2008 Denial, EPA interpreted this criterion as calling for a review of California's GHG standards separately from the remainder of its motor vehicle emission control program. In that context, it was determined appropriate to look at whether the emissions from California motor vehicles, as well as the local climate and topography in California, are the fundamental causal factors for the air pollution problem of greenhouse gases. This interpretation limited the meaning of this provision to situations where the motor vehicle standards at issue were designed to address an air pollution problem that was local or regional in nature, such that the local conditions in California were the fundamental causes of the air pollution problem.

The March 6, 2008 Denial applied this interpretation by focusing on elevated concentrations of greenhouse gases as the air pollution—a global air pollution problem. The March 6, 2008 Denial rejected arguments that the GHG standards should also been seen as an ozone control strategy, on the grounds that even if elevated concentrations of greenhouse gases lead to climate changes that exacerbate ozone, the causes of elevated concentrations of greenhouse gases are not solely local to California but are global in nature.

This overly narrow view fails to consider that although the factors that cause ozone are primarily local in nature and that ozone is a local or regional air pollution problem, the impacts of global climate change can nevertheless exacerbate this local air pollution problem. Whether or not local conditions are the primary cause of elevated concentrations of greenhouse gases and climate change, California has made a case that its greenhouse gas standards are linked to amelioration of California's smog problems. Reducing ozone levels in California cities and agricultural areas is expected to become harder with advancing climate change. California and many other commenters note that ''California's high ozone levels—clearly a condition Congress considered—will be exacerbated by higher temperatures from global warming.'' [112] California also notes that there is general consensus that temperature increases from climate change will exacerbate the historic climate, topography, and population factors conducive to smog formation in California, which were the driving forces behind Congress' inclusion of the waiver provision in the Clean Air Act.[113] There is a logical link between the local air pollution problem of ozone and California's desire to reduce GHGs as one way to address the adverse impact that climate change may have on local ozone conditions.[114] Given the clear deference that Congress intended to provide California on the mechanisms it chooses to use to address its air pollution problems, it would be appropriate to consider its GHG standards as designed in part to help address a local air pollution problem, and, thus, a waiver should not be denied even under the narrow interpretation employed in the March 6, 2008 Denial.

2. Do the Impacts of Climate Change in California Support a Denial of the Waiver?

As part of EPA's March 6, 2008 Denial, EPA also considered an alternative interpretation for this criterion, where EPA would consider ''the effects in California of this global air pollution problem * * * in comparison to the rest of the country, again addressing the GHG standards separately from the rest of California's motor vehicle program.'' EPA considered evidence and arguments submitted by commenters concerning whether the impacts of global climate change in California were significant enough and different enough from the rest of the country such that California could be considered to need its greenhouse gas standards to meet compelling and extraordinary conditions.[115] EPA determined in the March 6, 2008 Denial that the waiver should be denied under this approach as well.

[110] California Air Resources Board, EPA–HQ–OAR–2006–0173–0004.1, at 16.

[111] California Air Resources Board, EPA–HQ–OAR–2006–0173–1686 at 7.

[112] California submits evidence that at the national scale, using global to regional air quality models, various papers demonstrate that climate change alone can worsen summertime surface ozone pollution in polluted regions of the United States including one finding that ''climate change alone will increase summertime ozone in polluted regions by 1–10 ppb over the coming decades, with the largest effects in urban areas and during pollution episodes'' and therefore ''climate change will partly offset the benefit of the emissions reductions.'' See Jacob and Winner (2009), EPA–HQ–OAR–2006–0173–9010.4. CARB also cites the 2007 Interim Report of the U.S. EPA Global Change Research Program Assessment of the Impacts of Global Change on Regional U.S. Air Quality, a draft EPA study which concludes that climate change may significantly increase ground-level ozone in areas throughout the nation. See also EPA's final April 2009 ''Assessment of the Impacts of Global Climate Change on Regional U.S. Air Quality: A Synthesis of Climate Change Impacts on Ground-Level Ozone'' which states as one of its general findings: ''[W]hile these modeling studies cannot tell us what the future will hold, they demonstrate the potential for global climate change to make U.S. air quality management more difficult, and therefore future air quality management decisions should begin to account for the impacts of climate change.'' EPA–HQ–OAR–2006–0173–9006 at 7–9.

[113] *Id.*

[114] California also submits evidence that its GHG emission regulations would result in a slight reduction of ozone precursors. EPA–HQ–OAR–2006–0173–9006 at 10.

[115] 73 FR 12156, 12164.

As discussed above, this is not the interpretation that EPA now adopts. However, even if EPA were to examine the impacts of climate change in California under this interpretation, based on a review of all the evidence in the record, I cannot deny the waiver.

a. What Test Applies Under This Alternative Approach?

In the March 6, 2008 Denial, EPA found that legislative intent called for particular circumstances in California that are ''sufficiently different'' from the nation as a whole that justify separate standards in California.

EPA received comment stating that there is no statutory foundation for a ''sufficiently different'' test. Commenters noted there is nothing in the term ''compelling and extraordinary conditions'' that requires a comparison to the rest of the country. Similarly, commenters point to EPA's 1984 PM waiver where EPA's Administrator found that ''there is no indication in the language of section 209 or the legislative history that California's pollution problem must be the worst in the country for a waiver to be granted.'' EPA also received comment that it was not reasonable for EPA to conclude that California does not face global warming impacts, including water supply, agricultural production, and wildfire seasonal impacts that present compelling and extraordinary conditions, since other states will face similar impacts. Under this rationale, since states other than California are also experiencing serious global warming impacts, California could never receive a waiver to combat climate change. Commenters find flaw in this rationale: similar impacts in other states have never before prevented California from receiving a waiver. Even though many states are faced with non-attainment ozone areas and smog problems similar to California, California has never had a waiver denied based on a finding under section 209(b)(1)(B) that it did not need its standards to meet compelling and extraordinary conditions. As such, EPA also received comment suggesting that the impacts of climate change should be reviewed within the State of California to determine their severity, and that such impacts need not be compared to impacts experienced or projected to occur elsewhere in the country.

Several commenters maintain that although the impacts of climate change in California may be compelling, they are not extraordinary when compared to the rest of the nation.[116] These commenters point to the record and the many submissions from other states, which recount the variety of impacts and risks of climate change in their respective states and claim that California is no different than any other state.

EPA does not need to resolve this issue. As discussed below, EPA has evaluated the evidence submitted concerning the observed and projected impacts of global climate change in California and other states and determined that even under the alternative approach used in the March 6, 2008 Denial, EPA cannot deny a waiver.

b. Would a Waiver Be Denied Under This Alternative Approach?

Commenters supporting the waiver maintain that California has clearly demonstrated that the impacts in California of global warming are ''compelling and extraordinary.'' Several commenters point to the impacts of global warming recited in EPA's March 6, 2008 initial denial as evidence that EPA committed an error in judgment by not finding that the extreme and various impacts of climate change in California are compelling and extraordinary in nature and that, further, California clearly satisfied the section 209(b)(1)(B) requirements.[117]

Commenters supporting the waiver, including California, have submitted an extensive array of reports and data outlining the risks and impacts of climate change on California. EPA received comment restating EPA's own statements from its March 6, 2008 Denial, including the following:

> California has the largest agricultural based economy (13% of the U.S. market value of agricultural products sold) which is heavily dependent on irrigation, has the nation's highest crop value and is the nation's leading dairy producer. There is improved information on how livestock productivity may be affected by thermal stress and through nutritional changes in forage caused by elevated CO_2 concentrations. In addition, wine is California's highest value agricultural product, and wine grapes are very sensitive to temperature changes. California has the largest state coast population, representing 25% of the U.S. oceanic coastal population. The conditions which create California's tropospheric ozone problems remain (*e.g.,* topography, regional meteorology, number of vehicles) and climate change is expected to exacerbate tropospheric ozone levels. California's water resources are already stressed due to demands from agricultural, industrial and municipal uses, and climate change is expected to introduce an additional stress to an already over-allocate system by increasing temperatures and by decreasing snowpack which is an important water source in spring and summer. California has the greatest variety of ecosystems in the U.S., and the second most threatened and endangered species (of plants and animals combined) and the most threatened and endangered animal species, representing about 21% of the U.S. total.

In addition, one commenter suggests that this summary of findings about California's special characteristics that differentiate the magnitude, intensity and range of impacts of climate change supports that assessment. Dr. Stephen Schneider of Stanford University stated that ''not only are California's conditions 'unique and arguably more severe' (*e.g.* temperature impacts from global warming are more certain for states like California) but also that no other state faces the combination of ozone exacerbation, wildfire emission's contributions, water system and coast system impacts and other impacts faced by California.'' [118] Conversely, opponents of the waiver do not contest California's claims that the impacts of climate change in California and elsewhere are substantial.[119] Instead,

[116] Association of International Automobile Manufacturers, EPA–HQ–OAR–2006–0173–9005. This comment notes the finding in *Massachusetts* v. *EPA* that the impacts of global warming are ''widely shared'' among the states.

[117] EPA has not received any comment suggesting EPA's prior inventory of evidentiary information is incorrect as set forth in its discussion of the ''Relationship of Impacts of Global Climate Change in California to the Rest of the Country'' at 73 FR 12156, 12163–12168. In addition, several new studies have been submitted to EPA, including: a recent report from the Pacific Institute examining the impacts that sea level rise would have on population, infrastructure, and property in California (this report uses projections of medium to medium-high greenhouse gas emissions scenarios indicating a 1.4 meter rise in the seal level by 2100 with 480,000 people at risk and $100 million in property at risk from a 100 year flood event); California's Climate Action Team Reports that emphasizes many of the points made in California's waiver request including the air quality impacts (''Climate change could slow progress toward attainment of health-based air quality standards and increase pollution control costs by increasing the potential for high ozone and high particulate days.'' The report itself synthesizes 37 recent reports that address a wide body of information on the range and gravity of the risks that climate change poses to California's citizens, natural resources, and economy); and the Public Policy Institute of California assessment of climate change on public health in California and cites number impacts including ''an increase in the frequency and severity of air pollution episodes'' and ''an increase in extreme heat events and associated increases in heat related morbidity and mortality.'' *See* Environmental Defense Fund, EPA–HQ–OAR–2006–0173–9025 at 15–18; *See also* California Air Resources Board, EPA–HQ–OAR–2006–0173–9006 at 7–16.

[118] Environmental Defense Fund, EPA–HQ–OAR–2006–0173–9025 at 11–12.

[119] The Association of International Automobile Manufacturers notes that although in the March 6, 2008 Denial, ''EPA found that there is ample evidence that global warming is 'compelling' in the

opponents of the waiver claim that the impacts in California are not unique or extraordinary. EPA received comment suggesting that the impacts of climate change in California are not sufficiently different from the nation as a whole to warrant a waiver.[120] Commenters note that the ''need'' requirement in section 209(b)(1)(B) authorizes the creation of regulatory standards specific to California only in cases where it is necessary to meet conditions unique to California. Commenters claim that California cannot meet this standard with respect to a global problem that does not affect California in a unique way as compared to other states. The commenters claim the impacts to coastline, ozone levels, and other impacts are not unique to California as they affect many other states as well.[121]

EPA notes that under this alternative approach the opponents of the waiver continue to bear the burden of proof to demonstrate their claims. Commenters opposing the waiver primarily focus and argue on one issue: Whether the effects of climate change in California are sufficiently different from the nation as a whole. Opponents of the waiver identify singular or multiple impacts in some other states but they largely submit conclusions—not factual evidence—as to why such adverse impacts demonstrate that California is not sufficiently different. On the other hand, California has identified a wide variety of impacts and potential impacts within California, which include exacerbation of tropospheric ozone, heat waves, sea level rise and salt water intrusion, an intensification of wildfires, disruption of water resources by, among other things, decreased snowpack levels, harm to high value agricultural production, harm to livestock production, and additional stresses to sensitive and endangered species and ecosystems. Opponents have not demonstrated that any other state, group of states, or area within the United States would face a similar or wider-range of vulnerabilities and risks. In addition, California has submitted information that climate change can impact ozone levels in California due to temperature exacerbation effects. Although other areas of the country are also projected to experience increases in temperatures which may also exacerbate local ozone levels, opponents of the waiver have not demonstrated that California's ozone levels should not be considered compelling and extraordinary conditions.

Under this alternative interpretation, the burden of proof is on the opponents of the waiver to demonstrate that the impacts of global climate change in California are either not significant enough or are not different enough from the rest of the country to be considered compelling and extraordinary conditions. The opponents of the waiver have focused their argument on the latter part of this interpretation, whether the impacts in California are sufficiently different from the rest of the country. Limiting evaluation to this issue, California has presented evidence of a wide variety of vulnerabilities, impacts and potential impacts within California, while the opponents have not demonstrated that any other state, group of states, or area within the United States would face a similar or wider-range of vulnerabilities and risks. Therefore, EPA believes that those opposing the waiver have not met their burden of proof to demonstrate that the conditions in California are not sufficiently different and that a waiver should be denied under this alternative approach.

It is important to note that nothing in this decision or this document should be construed as reflecting a judgment concerning the issues pending before EPA under section 202(a) of the Act—whether emissions of GHGs from new motor vehicles or engines cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. EPA recently proposed to make an affirmative finding under that statutory provision.[122] The issues involved in that proposal are separate and different from those involved in this decision on California's request for a waiver under section 209(b). Nothing in this decision should be construed as reflecting the Agency's judgment regarding any issue relevant to the determinations in the pending proposal under section 202(a). The statutory provisions and criteria are different, and the judgments called for under these provisions are very different in nature. For example, in evaluating the alternative section 209(b)(1)(B) interpretation, I am not evaluating how serious the impacts or potential impacts of global climate change are, either in California or the rest of the country, as the opponents of the waiver have not focused on that issue. My finding under this alternative interpretation is a narrow one, and is limited to finding that the opponents of the waiver have not met their burden of proof under this alternative interpretation of section 209(b) concerning how the impacts in California might differ from the rest of the country.

3. Must California's GHG Standards Achieve a Demonstrated Reduction in GHG Atmospheric Concentrations or Impacts Under Section 209(b)(1)(B)?

Regardless of whether EPA examines the need for California's motor vehicle emissions program or conversely the need just for the GHG emission standards, some commenters suggest

sense that it presents serious environmental issues, the agency correctly determined that it does not present an extraordinary condition in California.'' EPA–HQ–OAR–2006–0173–9005 at 9. EPA did receive comment from Air Improvement Resources (AIR) suggesting that it might be contesting whether positive feedback from CO_2 concentrations on temperature increases (as seen in the models and data submitted to EPA by proponents of the waiver) will be seen in certain geographic areas due to an increase in cloudiness. EPA–HQ–OAR–2006–0173–13662 at 5–6. However, in its same submission it also states that while it may be true that California's cities will be disproportionately affected by increased temperatures it is by no means clear that this will be true in the future. (See p. 7). As noted in the text, the burden of proof is on the opponents of the waiver to demonstrate that the effects of climate change are not compelling or serious. Such opponents have not clearly stated the basis for making such a determination nor countered the many studies and data submitted by California and other proponents of the waiver. For purposes of this waiver proceeding, EPA is not making its own judgment with regard to the issues under section 202(a).

[120] Association of International Automobile Manufacturers, EPA–HQ–OAR–2006–0173–9005 at 9, citing 73 FR 12168—''As the discussion above indicates, global climate change has affected, and is expected to affect, the nation, indeed the world, in ways very similar to the conditions noted in California * * * These identified impacts are found to affect other parts of the United States and therefore these effects are not sufficiently different compared to the nation as a whole. California's precipitation increases are not qualitatively different from changes in other areas. Rise in sea level in the coastal parts of the United States are projected to be severe, or more severe, particularly in consequences, in the Atlantic and Gulf Regions than in the Pacific regions, which includes California. Temperature increases have occurred in most parts of the United States, and while California's temperatures have increased by more than the national average, there are other places in the United States with higher or similar increases in temperature.''

[121] *Id.* at 9–10. The Association of International Automobile Manufacturers notes that comments submitted from States supporting the waiver include statements such as ''Connecticut faces loss of its shoreline and beaches, forest die offs, destruction of shell fisheries and marine resources, * * *'' ''Global warming is having a serious impact on New Jersey's public health and economy * * *'' ''Rhode Island * * * As the most densely populated State in the country, direct impacts due to climate change, such as heat wave, increased fire frequency, increased storm intensity resulting in beach erosion, loss of property, and loss of life—pose great concerns for us,'' and other concerns expressed by states such as Pennsylvania, Maryland, and New Mexico. See also Alliance of Automobile Manufacturers, EPA–HQ–OAR–2006–0173–1297 at 14–17 and EPA–HQ–OAR–2006–0173–0421–12 at 61–70 and General Motors Corporation, EPA–HQ–OAR–2006–0173–1596 at 6–8.

[122] See EPA's ''Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act'' at 74 FR 18886 (April 29, 2009).

that the GHG emission standards must be proven to have some mitigative effect in order for them to be needed. Some commenters suggest that to the extent that California's high ozone levels could be exacerbated by higher temperatures from global warming, there is no demonstration in the waiver record that implementation of the California GHG standards would have any perceptible impact on temperature trends in California. Opponents of the waiver have argued that California, therefore, cannot show that its GHG emission regulations will achieve a measurable and specific temperature reduction in California, and thereby mitigate the identified climate change impacts in California.[123] They maintain that California's GHG regulations will not be needed to meet a particular condition since there is no analysis suggesting that California's GHG standards will have any discernible impact on that condition or achieve any perceptible improvement in environmental conditions inside California. In terms of GHG concentrations in California's atmosphere, EPA received comment stating there is no offered proof that a reduction in GHG emissions from California vehicles would have any impact on GHG concentrations in California's atmosphere compared to the GHG concentration impacts already in the record.

In response, other commenters supporting the waiver assert that the efficacy of California's standards is not at issue in this proceeding. There is no requirement in section 209(b)(1)(B) that California prove a certain level of environmental benefit. They assert that is particularly true in this instance, where the actual and anticipated impacts of global warming are complex and historically unprecedented, and it is widely-recognized that a number of efforts by governments, private entities, and individuals globally will be required to mitigate climate change, as no single source of GHG emissions, whether from an entire state, sector of the nation's economy, or of individual countries, is completely dominant in terms of influencing atmospheric concentrations of GHGs. They claim that California need not show that the climate will in fact respond to its regulatory action; rather its obligation is to show a rational connection between the regulation it has promulgated and the problem it seeks to address.

As noted above, the Agency's inquiry under section 209(b)(1)(B) is whether California needs its own motor vehicle emission control program to meet compelling and extraordinary conditions. Under this criterion, EPA does not consider, for example, the extent to which specific PM standards will address the PM air pollution problem.[124] Under this approach, there is no need to delve into the extent to which the GHG standards at issue here would address climate change or ozone problems. That is an issue appropriately left to California's judgment.

Given the comments submitted, however, EPA has also considered an alternative interpretation, which would evaluate whether the program or standards has a rational relationship to contributing to amelioration of the air pollution problems in California. Even under this approach, EPA's inquiry would end there. California's policy judgment that an incremental, directional improvement will occur and is worth pursuing is entitled, in EPA's judgment, to great deference.[125] EPA's consistent view is that it should give deference to California's policy judgments, as it has in past waiver decisions, on California's choice of mechanism used to address air pollution problems. EPA does not second-guess the wisdom or efficacy of California's standards.[126] EPA has also considered this approach with respect to the specific GHG standards themselves, as well as California's motor vehicle emissions program.

After reviewing the arguments, I conclude that California has submitted evidence demonstrating not only the causal connection between higher temperatures from global warming and its general exacerbation of tropospheric ozone, but also the serious effects of that potential increase in ozone on the public health and welfare in California. EPA notes that several commenters have stated that while California's GHG regulations will provide only a small difference in temperatures and/or GHG concentrations, there clearly will be some reductions. These commenters note that given the numerous sources in California and around the world that contribute to GHG concentrations, no single regulation could on its own reduce GHG emissions to the levels necessary to reduce all concerns, but that every small reduction is helpful in reducing these concerns. As noted by the Supreme Court in *Massachusetts* v. *EPA,* while it is true that regulating motor vehicle GHG emissions will not by itself reverse global warming, a reduction in domestic automobile emissions would slow the pace of global emissions increase no matter what happens with regard to other emissions.[127] Moreover, there is some evidence in the record that proffers a specific level of reduction in temperature resulting from California's regulations.[128] EPA believes that under this alternative approach, opponents have not met their burden of demonstrating that California's motor vehicle program, or its GHG standards, does not have a rational relationship to contributing to amelioration of the air pollution problems in California.

E. Section 209(b)(1)(B) Conclusion

With respect to the need for California's state standards to meet compelling and extraordinary conditions, I have found that the March 6, 2008 Denial was based on a departure from the traditional interpretation of the waiver provision. An examination of the text of section 209(b) and the legislative history, when viewed together, lead to the conclusion that the best way to interpret this provision and the interpretation I adopt here, is to apply the traditional interpretation to the evaluation of California's greenhouse gas standards for motor vehicles. As such, if California needs a separate motor vehicle program to address the kinds of compelling and extraordinary conditions discussed in the traditional interpretation, then Congress intended that California could have such a program. The best interpretation of the text and legislative history of this provision is that Congress did not use this criterion to limit California's discretion to a certain category of air pollution problems, to the exclusion of others.

Under that interpretation, I cannot find that opponents of the waiver have demonstrated that California does not need its state standards to meet compelling and extraordinary conditions. The opponents of the waiver have not adequately demonstrated that

[123] However, the Alliance presented some evidence at the May 30, 2007 waiver hearing that some temperature reduction may be achieved, based on application of the Wigley equation. EPA–HQ–OAR–2006–0173–0421 at 71.

[124] 74 FR 12156, 12159–60 (March 6, 2008).

[125] *MEMA I* at 1110–11.

[126] California Air Resources Board, EPA–HQ–OAR–2006–0173–0004.

[127] *Massachusetts* v. *EPA,* 59 U.S. 497, 525–526 (2007).

[128] EPA also received comment during the second comment period indicating that a local decrease in GHGs can have a direct effect on reducing local ozone concentrations, as well as particulate matter concentrations, in California, before they mix with other greenhouse gases in the upper atmosphere. The comments that address Dr. Jacobson's testimony do not dispute these atmospheric reactions and the fact that they can increase local temperature which can increase ozone concentrations.

California no longer has a need for its motor vehicle emission program.

Separately, even applying the alternative interpretations set forth in the March 6, 2008 Denial, I cannot find that that the opponents of the waiver have demonstrated that California does not need its greenhouse gas emission standards to meet compelling and extraordinary conditions. Nor can I find that the opponents of the waiver have demonstrated that the impacts from climate change in California are not compelling and extraordinary.

Therefore, upon reconsideration of the March 6, 2008 Denial, I determine that I cannot deny the waiver request under section 209(b)(1)(B).

VI. Are the California GHG Standards Consistent With Section 202(a) of the Clean Air Act?

EPA has reviewed the information submitted to the record of this proceeding to determine whether the parties opposing this waiver request have met their burden to demonstrate that the GHG standards are not consistent with section 202(a). In its submissions, CARB has submitted information and argument that these GHG standards do provide regulated manufacturers with sufficient lead-time for the near term standards regardless of how it is measured and regardless of the waiver denial. For the mid-term standards, CARB has stated that initially, manufacturers can achieve compliance with credits from the near-term production, and subsequently can achieve compliance with refinements to existing technology and advanced technology combinations. The industry opponents of the waiver have submitted information and argument that there is insufficient leadtime for the CARB near-term standards because the already short time-frame for technology development was made even shorter by EPA's waiver denial. For the mid-term standards, the industry stated that it is likely that most large-volume manufacturers will be able to comply with the CARB standards only by ''mix-shifting'' their products to offer for sale more higher mileage vehicles to ensure meeting the CARB fleet average. The industry also submitted information and argument that the GHG standards will result in unsafe vehicles because vehicles meeting the standards will be lighter and more hazardous to occupants in accidents, and will be driven more because of higher fuel efficiency, so more accidents will occur. The industry argued that these complying vehicles are technologically infeasible because of the safety concerns. EPA's analysis of the consistency of the CARB standards with section 202(a) of the Act follows.

A. Historical Approach: The Standard of Review for Consistency With Section 202(a)

Under section 209(b)(1)(C), EPA must deny California's waiver request if the Agency finds that California standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. The scope of EPA's review under this criterion is narrow. EPA has previously stated that the determination is limited to whether those opposed to the waiver have met their burden of establishing that California's standards are technologically infeasible, or that California's test procedures impose requirements inconsistent with the Federal test procedure.[129] Previous waivers of federal preemption have stated that California's standards are not consistent with section 202(a) if there is inadequate lead time to permit the development of technology necessary to meet those requirements, giving appropriate consideration to the cost of compliance within that time.[130] California's accompanying enforcement procedures would be inconsistent with section 202(a) if the Federal and California test procedures conflict, *i.e.,* if manufacturers would be unable to meet both the California and Federal test requirements with the same test vehicle.[131]

EPA does not believe that there is any reason to review these criteria any differently for EPA's evaluation of California's greenhouse gas waiver request. There is nothing inherently different about how GHG control technologies should be reviewed when making a determination about technological feasibility or consistency of test procedures.

In the GHG waiver proceeding, automobile industry opponents of the waiver have presented evidence for EPA's consideration which they believe will require EPA to make the finding of inconsistency with section 202(a), and therefore require EPA to deny this waiver. They believe this finding should be made on one or more grounds that there is inadequate lead time provided by the CARB standards. EPA's process for evaluating lead time is discussed immediately below. The industry opponents also raise arguments based on the cost of compliance with the standards, and claims of possible significant vehicle safety problems caused, at least indirectly, by compliance with the GHG standards, which will be discussed in other parts of this section.

Regarding lead time, EPA historically has relied on two decisions from the U.S. Court of Appeals for the DC Circuit for guidance regarding the lead time requirements of section 202(a). Section 202(a) provides that an emission standard shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance. In *Natural Resources Defense Council* v. *EPA* (''*NRDC*''), 655 F.2d 318 (DC Cir. 1981), the court reviewed claims that EPA's particulate matter standards for diesel cars and light trucks were either too stringent or not stringent enough. In upholding the EPA standards, the court concluded:

> Given this time frame [a 1980 decision on 1985 model year standards]; we feel that there is *substantial room for deference* to the EPA's expertise in projecting the likely course of development. The essential question in this case is the pace of that development, and absent a revolution in the study of industry, defense of such a projection can never possess the inescapable logic of a mathematical deduction. We think that the EPA will have demonstrated the reasonableness of its basis for projection if it answers any theoretical objections to the [projected control technology], identifies the major steps necessary in refinement of the technology, and offers plausible reasons for believing that each of those steps can be completed in the time available.[132]

Another key case addressing the lead time requirements of section 202(a) is *International Harvester* v. *Ruckelshaus* (''*International Harvester*''), 478 F 2.d 615 (DC Cir. 1979). In *International Harvester,* the court reviewed EPA's decision to deny applications by several automobile and truck manufacturers for a one-year suspension of the 1975 emission standards for light-duty vehicles. In the suspension proceeding, the manufacturers presented data which, on its face, showed little chance of compliance with the 1975 standards, but which, at the same time, contained many uncertainties and inconsistencies regarding test procedures and parameters. In a May 1972 decision, the Administrator applied an EPA

[129] *MEMA I,* 627 F.2d at 1126.

[130] See *e.g.,* 38 FR 30136 (November 1, 1973) and 40 FR 30311 (July 18, 1975).

[131] To be consistent, the California certification test procedures need not be identical to the Federal test procedures. California procedures would be inconsistent, however, if manufacturers would be unable to meet both the state and Federal requirements with the same test vehicle in the course of the same test. See, *e.g.,* 43 FR 32182, (July 25, 1978).

[132] *Natural Resources Defense Council* v. *EPA,* 655 F.2d 318, 331. (emphasis added)

methodology to the submitted data, and concluded that ''compliance with the 1975 standards by application of present technology can probably be achieved,'' and so denied the suspension applications.[133] In reviewing the Administrator's decision, the court found that the applicants had the burden of coming forward with data showing that they could not comply with the standards, and if they did, then EPA had the burden of demonstrating that the methodology it used to predict compliance was sufficiently reliable to permit a finding of technological feasibility. In that case, EPA failed to meet this burden.

With respect to lead time, the court in *NRDC* pointed out that the court in *International Harvester* ''probed deeply into the reliability of EPA's methodology'' because of the relatively short amount of lead time involved (a May 1972 decision regarding 1975 model year vehicles, which could be produced starting in early 1974), and because ''the hardship resulting if a suspension were mistakenly denied outweigh the risk of a suspension needlessly granted.'' [134] The *NRDC* court compared the suspension proceedings with the circumstances concerning the diesel standards before it: ''The present case is quite different; 'the base hour' for commencement of production is relatively distant, and until that time the probable effect of a relaxation of the standard would be to mitigate the consequences of any strictness in the final rule, not to create new hardships.'' [135] The *NRDC* court further noted that *International Harvester* did not involve EPA's predictions of future technological advances, but an evaluation of presently available technology.

EPA also evaluates CARB's request in light of congressional intent regarding the waiver program generally. This is consistent with the motivation behind section 209(b) to foster California's role as a laboratory for motor vehicle emission control, in order ''to continue the national benefits that might flow from allowing California to continue to act as a pioneer in this field.'' [136]

For these reasons, EPA believes that California must be given substantial deference when adopting motor vehicle emission standards which may require new and/or improved technology to meet challenging levels of compliance. This deference was discussed in an early waiver decision when EPA approved the waiver request for California's 1977 model year standards:

> Even on this issue of technological feasibility I would feel constrained to approve a California approach to the problem which I might also feel unable to adopt at the Federal level in my own capacity as a regulator. The whole approach of the Clean Air Act is to force the development of new types of emission control technology where that is needed by compelling the industry to 'catch up' to some degree with newly promulgated standards. Such an approach to automotive emission control might be attended with costs, in the shape of a reduced product offering, or price or fuel economy penalties, and by risks that a wider number of vehicle classes may not be able to complete their development work in time. Since a balancing of these risks and costs against the potential benefits from reduced emissions is a central policy decision for any regulatory agency, under the statutory scheme outlined above I believe I am required to give very substantial deference to California's judgment on that score.'' [137]

EPA has traditionally considered lead time as starting with the date that the rules are adopted and become effective under California state law—not from the subsequent date of a request for a waiver or the decision on a waiver.[138] This is consistent with the structure of section 209(b), where the waiver criteria are presumed to be met absent an affirmative finding that requires EPA to deny it, which gives EPA a limited scope of review and affords deference to California. At the time that California adopts its rules, manufacturers have clear knowledge and are fully on notice of California's requirements and the date when such requirements will be implemented. In this case, the CARB GHG regulations became final and effective in 2004. This was five years before the first phase of compliance (the 2009 model year) and eight years before compliance with the ''mid-term'' standards, which include the most stringent standards (model year 2016). Because of this large amount of lead time available to manufacturers under CARB's regulatory schedule, the approach described in *NRDC* is the most appropriate under the circumstances at issue here.

EPA notes, however, that manufacturers have disputed whether ample lead time exists. Because EPA initially denied this waiver request, manufacturers have asserted that the lead time should have ''tolled'' at the time of the denial, since California could not implement and enforce standards which had not received a waiver. This tolling issue is discussed below in section VI.F.1. Additionally, if the tolling might be considered to cause a reduction in lead time for the CARB near-term standards, it could be argued that the *International Harvester* approach, involving circumstances where the lead time is short, should apply. CARB, while maintaining that the *NRDC* approach is the correct measurement here, commented that even if *International Harvester* was the correct guide, ''we believe that a combination of manufacturers' statements and plans indicated that manufacturers are already in, or with minor changes can demonstrate compliance for the 2009 and 2010 model years.'' [139] Under *International Harvester,* the burden was on the industry to demonstrate that the evidence supported the grant of an extension, then, the burden shifted to EPA to demonstrate the reasonableness of its projection. As discussed below, the manufacturers have not met their burden to show that the California standards are not technologically feasible, considering the lead time provided and cost of compliance.

Under *NRDC,* when compliance with CARB standards is phased-in over a lengthy time period, the reasonableness of a projection of technological feasibility can be based on answering any theoretical objections to the projected control technology; identifying the major steps necessary in refinement of the technology; and offering plausible reasons for believing that each of those steps can be completed in the time available.[140] EPA's review of the evidence on the technological feasibility of GHG technologies follows.

B. CARB's Assessment of the State of Development of GHG Reduction Technology and Comments Supporting CARB's Assessment

1. Development of GHG Reduction Technology

Under the terms of Assembly Bill 1493, which is the legislation that directed CARB to establish greenhouse gas emission standards, the CARB staff was directed to set those standards in a manner that would ''achieve the maximum feasible and cost-effective reduction of greenhouse gas emissions from motor vehicles.'' CARB has

[133] *International Harvester* v. *Ruckelshaus,* 478 F.2d 615, 626.

[134] *NRDC,* 655 F.2d 318, 330.

[135] Id. The ''hardships'' referred to are hardships that would be created for manufacturers able to comply with the more stringent standards being relaxed late in the process.

[136] 40 FR 23102, 23103 (waiver decision citing views of Congressman Moss and Senator Murphy) (May 28, 1975).

[137] *Id.* at 23103.

[138] *See e.g.,* 59 FR 40625 (September 22, 1994).

[139] California Air Resources Board, EPA–HQ–OAR–2006–0173–9006, at 23.

[140] *NRDC,* 655 F.2d 318, 331.

identified four basic areas of GHG reduction technology: (1) Engine, drivetrain and other vehicle modifications; (2) mobile air conditioning system modifications; (3) alternative fuel vehicles; and (4) exhaust catalyst improvements.

To accomplish the assessment mandated by AB 1493, CARB staff held several meetings and workshops in 2003 and 2004 on GHG vehicle technology. Those meetings brought together technology developers, researchers from the auto industry, vehicle component suppliers, academic participants, and vehicle simulation firms to discuss technologies and their potential to reduce climate change emissions from motor vehicles. CARB staff presented its preliminary findings in a draft technology and cost assessment and held a public workshop to receive comments in April 2004. Following that presentation, CARB issued a draft proposal on the methodology for developing the GHG standards and the preliminary standards themselves, in June 2004. A public workshop on this draft was held in July 2004. After considering all the comments from these sessions, CARB published its final staff proposal in the Staff Report: Initial Statement of Reasons (ISOR) in August 2004.[141]

The CARB vehicle technology results in the ISOR relied on an existing vehicle simulation study (discussed below), as well as other existing studies and research, rather than on any sort of primary development or engineering work. CARB staff acknowledged that ''because powertrain changes will be the focus for obtaining the reductions sought in this (GHG) rulemaking rather than aftertreatment technologies, staff could not reasonably build prototypes and test them in our laboratory. * * * Because building and testing prototypes is so expensive, and time consuming, even major automobile manufacturers rely on vehicle simulation firms to predict the performance of new technology either individually or in combination, and to assess their performance and emissions.'' [142] CARB further commented that the advantage of systems modeling ''is to allow a wide diversity of combinations of technologies to be modeled together and examine how they interact when simulating a vehicle operating on various driving cycles.'' [143]

The study forming the basis of the ISOR vehicle technology results was a comprehensive vehicle simulation modeling effort and a thorough cost analysis performed for the Northeast States Center for a Clean Air Future (NESCCAF), by the recognized expert companies AVL Powertrain Engineering, Martec, and Meszler Engineering Services.[144] CARB staff believed that ''the NESCAAF study is the most advanced and accurate evaluation of vehicle technologies that reduce greenhouse gas emissions yet performed.'' [145] Besides the NESCAAF study on vehicle technologies, CARB monitored a separate analysis of the GHG benefits of alternative fuel technologies, including upstream benefits and the cost associated with alternative fuel technologies, from work performed by TIAX, LLC. Finally, for air conditioning research, CARB staff met with various groups (including EPA) to develop its approach for reducing the emissions of air conditioning refrigerant and excess CO_2 emissions from air conditioning use.

After the release of the Initial Staff Report, CARB received comments on its evaluation of technological steps that could be taken to meet its GHG standards from parties who supported the CARB study, and from various industry parties who disagreed with many of the CARB conclusions. As part of its standard-setting process, CARB staff considered the comments from all parties on both sides, and responded to industry concerns in its Final Statement of Reasons (FSOR), published in August 2005.[146] CARB concluded that it had identified the necessary technology in existence at that time that could enable vehicles to meet the GHG standards; or specifically identified the projected control technologies; answered the industry objections regarding the technology; and has explained its reasons for believing that each of the steps can be completed in the time available.

2. Overview of Technologies and Their Projected Applications

The NESCAAF study identified technologies for reducing CO_2 emissions that were modeled both individually and in various technology combinations (or ''packages''). Because there were a multitude of technologies available for the CO_2 reductions, CARB realized that there needed to be engineering guidelines for choosing combinations that would be economical to the consumer. The guidelines tried to avoid combining technologies that tend to address the same categories of losses or technologies that may not complement one another from a drivability standpoint. Participants in the NESCAAF study and CARB staff then assembled a wide variety of combined technologies to evaluate through simulation modeling in order to identify those which would provide the greatest CO_2 reductions. In an effort to cover the full spectrum of CO_2 reductions that could be accomplished, CARB staff divided the results into two categories: near-term phase-in and mid-term phase-in applications. These translate to the following model year ranges: Near-term (2009–2012) and mid-term to fully phased-in (2013–2016).[147]

In the Initial Staff Report, CARB staff summarized the state of near-term technology for meeting its proposed CO_2 standards:

> The technologies explored (in the Initial Staff Report) are currently available on vehicles in various forms, or have been demonstrated by auto companies and/or vehicle suppliers in at least prototype form * * * There is near term, or off the shelf technology package in each of the vehicles classes evaluated (small and large car, minivan, small and large truck) that resulted in a reduction of CO_2 emissions of at least 15 to 20 percent from baseline values. In addition there is generally a near-term technology package in each of the vehicle classes that results in about a 25 percent CO_2 emission reduction.'' [148]

For engines, CO_2 is emitted with engine exhaust as a result of the combustion process. CARB projected that by 2009, reductions in engine CO_2 emissions would result from these primary technology drive-train changes which could be expected in all vehicle classes: Dual cam phasing, turbocharging with engine downsizing, automated manual transmissions, and

[141] California Air Resources Board, EPA–HQ–OAR–2006–0173–0010.44.

[142] *Id.* at 43.

[143] *Id.* at 58.

[144] NESCCAF undertook this study ''to help define GHG—reducing motor vehicle technologies that are expected to be feasible, commercially available and cost effective in the 2009–2015 timeframe.'' It was ''inspired by the California's legislature's passage of Assembly Bill 1493 * * *'' and it related to the Northeast U.S. because ''the results presented in this report have significant implications for states in the Northeast and elsewhere that share California's commitment to reducing transportation related GHG emissions as part of a broader effort to address the risks posed by global climate change.'' Reducing Greenhouse Gas Emissions from Light-Duty Motor Vehicles, NESCCAF, p 1–1, September 2004.

[145] California Air Resources Board, EPA–HQ–OAR–2006–0173–0010.44 at 44.

[146] California Air Resources Board, EPA–HQ–OAR–2006–0173–0010.116.

[147] The NESCAAF study had a different schedule: Near-term technologies (2009–2012), mid-term (2013–2015) and long term (2015 and later). California Air Resources Board, EPA–HQ–OAR–2006–0173–0004.1 at 27.

[148] California Air Resources Board, EPA–HQ–OAR–2006–0173–0010.44 at iii.

camless valve actuation.[149] CARB also described several other technology items that may not be present in most vehicles in the early years of the standards, but are expected to be used in later years as development continues. These include: Gasoline direct injection, engine friction reduction, aerodynamic drag and rolling resistance, more aggressive shift logic, and early torque converter lock-up. Finally, CARB staff identified two other technology choices that while offering real GHG reduction capability were not as cost effective as the other technologies, and, accordingly, were not projected to be applied in the near-term—these are hybridization and greater dieselization of the fleet.

For the later years of these standards, CARB stressed that its GHG regulations ''rely less on traditional technology-forcing than repackaging a combination of off-the-shelf technologies to meet the adopted standards.'' [150] The NESCAAF Report included, for each of the five vehicle categories, a table showing several promising technology packages, for each of the three time frames (near-, mid-, and long-term), their resulting CO_2 reductions, and expected costs.[151] Additionally, for the long-term phase of the standards (2015–2016), CARB projects that there will be increased market penetration of hybrid-electric vehicles and advanced multi-mode diesel vehicles.[152] In its December 2005 request letter, CARB discussed how improvements will occur, as it expects ''that a manufacturer would plan for a rollout of new technologies that would begin in 2009 and then build on the initial efforts with additional near and mid-term technologies that would be commensurate with previous investments.''[153]

For air conditioning systems, GHG emissions are either direct or indirect. Direct emissions are the result of normal leakage of the air conditioning refrigerant from the system over time, as well as leakages that occur because of vehicle accidents, poorly performed maintenance, or improper refrigerant recovery prior to vehicle scrappage. Air conditioning refrigerants used in vehicles today are typically a hydro-fluorocarbon (HFC), which is a very strong GHG. Indirect emissions are the additional CO_2 emissions from the engine which occur because of the added load on the engine from operation of the air conditioning system. CARB, using the modeling in the NESCAAF Report, projected that CO_2 equivalent reductions could result from these improvements in the air conditioning system: improved variable displacement compressor with revised controls, improved low-leak systems, and the use of an improved refrigerant.[154]

CARB notes that alternative fueled vehicles generally can help reduce GHG emissions by: (1) Direct reduction of GHG emissions because the alternative fuels will produce fewer GHG emissions, and (2) indirect reductions in GHG emissions because of the decreased upstream emissions. Upstream emissions are well-to-tank emissions, including the fuels' extraction, processing, distribution and marketing. The alternative fuels which result in GHG reductions are CNG, LPG, ethanol (including E85), electric, and hybrid-electric.

In its ISOR, CARB identified exhaust catalyst improvement as another technology area that could lead to GHG emission reductions, specifically the reduction of methane and nitrous oxide (N_2O). These gases are greenhouse gases just like CO_2, but their mass emissions from motor vehicles are very small compared to CO_2. CARB notes that ''although it is conceivable that these methane and N_2O emissions could be reduced by faster catalyst heating at vehicle start-up and enhanced catalysts systems with higher surface density or higher and/or revised catalyst loadings, staff is not aware of such efforts at this time (August 2004).'' [155] There were no further submissions to the record by CARB or any other party on this particular technology area.

3. CARB's Updates on Technological Development

At the time of the first set of EPA hearings on the CARB waiver request, in April 2007, CARB presented additional information to bolster its assertions on technological feasibility to highlight developments in GHG technology since CARB originally submitted its request to EPA in 2005. CARB summarized the recent developments and additional examples of real-life implementation of the technologies identified in its waiver request. In its comments following the April 2007 hearings, and its July 2007 letter responding to post-hearing comments, CARB offered additional information to bolster their GHG technology projections. Generally, CARB pointed to numerous instances in which many of the near-term and mid-term technologies have been applied in vehicles which have been produced in the years since 2004 (when the CARB standards became final) right up to mid-2007. For example, attached to additional comment letters it submitted to EPA's Docket in June and July 2007, CARB discussed the increased use of the GHG technologies discussed in the ISOR and provided summaries of GHG technology used in 2007 and 2008 model year vehicles showing increased use of all the near-term and mid-term technologies.[156] CARB also offered numerous examples, contained in manufacturer news releases and advertisements, and trade press stories, illustrating real-life adoption of the GHG technologies in both domestic and foreign manufacturers' vehicles.[157]

At its March 5, 2009 hearing following EPA's decision to reconsider its previous denial, CARB presented additional new information highlighting developments in GHG technology since the last opportunity to submit public comment on this issue. In addition, some environmental groups submitted testimony and comments in support of the CARB finding of technological feasibility of the GHG standards. This next section will summarize the technological feasibility information submitted by CARB and other parties. CARB noted that the manufacturers were employing the individual GHG-reducing technologies as well as the packages of those technologies CARB had projected as viable compliance pathways as early as 2004. CARB also noted that in addition to phasing-in technologies, as CARB had originally predicted, manufacturers were using other technologies that CARB did not rely on originally—including increased hybrid sales, downsized turbocharged engines in light truck lines, a large influx of diesel vehicle sales, and improved air conditioning systems. In some cases, the resulting reductions produced as much as 10% of the GHG reductions needed for manufacturers' fleet averages to meet the CARB standards.

CARB also cited to recent EPA studies on technological feasibility and costs for

[149] California Air Resources Board, EPA–HQ–OAR–2006–0173–0010.44 at 59–60.

[150] California Air Resources Board, EPA–HQ–OAR–2006–0173–0004.1 at 34.

[151] California Air Resources Board, EPA–HQ–OAR–2006–0173–0004.1 at 27 and 35, and OAR–2006–0173–0010.44 at 59.

[152] California Air Resources Board, EPA–HQ–OAR–2006–0173–0004.1 at 27.

[153] California Air Resources Board, EPA–HQ–OAR–2006–0173–0004.1 at 35–36.

[154] California Air Resources Board, EPA–HQ–OAR–2006–0173–0010.44 at 69–73, and EPA–HQ–OAR–2006–0173–0004.1 at 22–23.

[155] California Air Resources Board, EPA–HQ–OAR–2006–0173–0010.44 at 78–79.

[156] California Air Resources Board, EPA–HQ–OAR–2006–0173–1686, Attachments 84 and 85.

[157] California Air Resources Board, EPA–HQ–OAR–2006–0173–1686, Attachments 86 through 93 and 103, 104, 114, and California Air Resources Board, EPA–HQ–OAR–2006–0173–3601, Attachments 173–177.

GHG reductions in motor vehicles, conducted by EPA in 2007. These EPA reports were discussed in EPA's Advanced Notice of Proposed Rulemaking on Regulating Greenhouse Gas Emissions Under the Clean Air Act published on July 30, 2008.[158] The findings in these studies were very consistent with the technological feasibility, cost and lead time estimates from the CARB ISOR in 2004.

Three EPA studies were referenced by CARB. First, CARB discussed the June 2008 document ''Vehicle Technical Support Document: Evaluating Potential GHG Reduction Programs for Light-Duty Vehicles (Light-Duty Vehicle TSD).'' [159] The Light-Duty Vehicle TSD represented EPA's assessment during 2007 of how a light-duty vehicle program for GHG emission reductions under the Clean Air Act might be designed and implemented, with two program options: either (1) a fixed percentage reduction (4%) in CO_2 emissions per model year from 2011 to 2018, or (2) an annual reduction in CO_2 emissions per model year from 2011 to 2018, based on a model developed by the Department of Transportation's Volpe Center, establishing CO_2 emission standards, at the point the model projects maximum net benefits for those model years.[160] The Light-Duty Vehicle TSD collected information from a wide range of sources, including a 2002 National Academy of Sciences report, the 2004 NESCAAF report (also used by CARB), current technical literature, and information from vehicle manufacturers and automotive suppliers. CARB noted that the emission reduction potentials and costs in the EPA study were similar to the reduction potentials and costs estimated by CARB in its ISOR. In discussing the Light-duty TSD in the ANPRM, EPA also acknowledged that, based on enhancements to the Volpe Model later in 2007, the earlier EPA analysis ''tended to underestimate the benefits and/or overestimate the costs of light-duty vehicle CO_2 standards that could be established under the CAA.'' [161]

CARB also referenced the March 2008 ''EPA Staff Technical Report: Cost and Effectiveness Estimates of Technologies Used to Reduce Light-duty Vehicle Carbon Dioxide Emissions.'' This report presented the EPA staff assessment of costs and effectiveness of over 40 CO_2 reduction technologies in the categories of engines, transmissions, hybrids, accessories and other technologies (*e.g.,* aerodynamic improvements). EPA noted that the majority of the technologies investigated are in production and available on current vehicles, either in the U.S., Europe or Japan. As part of that report, EPA worked with an internationally recognized automotive technology firm to perform a detailed vehicle simulation modeling study of the GHG reduction effectiveness of a number of advanced automotive technologies. As noted by CARB, the EPA Report obtained technology package reductions and cost estimates very similar to those in the CARB ISOR.[162] As in the earlier Light-Duty TSD, EPA noted that the estimates in this report are conservative because they rely on data sources from one to six years old and declared that the ''automotive industry is a technology-driven industry, and new technologies are developed and introduced quickly. A number of technologies which have only recently been introduced or will be within the next year are likely to see improvements in their effectiveness and cost reductions beyond what we estimate (in this report).'' [163]

Finally, CARB referenced an EPA staff technical memorandum ''Documentation of Updated Light-duty Vehicle GHG Scenarios,'' dated June 23, 2008.[164] This memorandum summarized the staff work to update the ''4% per year'' GHG reduction scenario that was first documented in the Light-duty Vehicle TSD, by addressing some of the deficiencies of the earlier study,[165] and was discussed in the ANPRM for GHG Standards. EPA once again noted that because the updated analysis did not address all the issues identified in the earlier TSD, it continued to believe that the results of this updated analysis are conservative, tending to overestimate the costs and/or underestimate the benefits. In its most recent comment, CARB noted that the EPA lead time estimates in EPA's ANPRM cite implementation rates supportive of CARB's estimates for implementing vehicle GHG reducing technologies.[166]

CARB summarizes the reports from EPA, NESCAAF and others by declaring that ''the technologies examined are well known and most are already being implemented on today's vehicles, while the others are simply advanced versions of conventional technologies that are already being demonstrated by vehicle manufacturers and component suppliers.'' [167] To bolster this statement, CARB submitted a list of Model Year 2009 vehicles which employ GHG reduction technologies, which shows a gradual phasing-in of these technologies across all manufacturers and all product lines. CARB also submitted a list showing 2009 Model Year vehicles that comply with the CARB GHG standards; the list shows significant numbers of 2009 passenger cars and light trucks meeting the 2012 and later standards, significantly ahead of the deadlines.

With respect to the overall technological feasibility of its GHG standards, CARB believes that it has reasonably projected technological feasibility, consistent with the approach employed in the *NRDC* decision, when manufacturers have several years of lead time before compliance. CARB notes that it ''either has demonstrated that the necessary technologies presently exist to meet the established standards or we have specifically identified the projected control technologies, answered objections raised by industry regarding those technologies, and explained why we believe that each of the steps can be completed in the time available.'' [168]

In support of its conclusion, CARB submitted for the record three analyses showing that the manufacturers are employing the GHG technologies at least as fast as CARB predicted, and certainly in time for compliance with the early model years. First, CARB did an ''industry-wide'' projection using manufacturers' 2009 sales projections and worst case CO_2 values per single test vehicle, and used the 2009 projected sales as unchanged for 2010 and 2011 model years.[169] The results of this analysis show industry-wide GHG

[158] Advanced Notice of Proposed Rulemaking, Regulating Greenhouse Gas Emissions Under the Clean Air Act, 73 FR 44354 (July 30, 2008).

[159] California Air Resources Board, EPA–HQ–OAR–2006–0173–9019.5.

[160] This approach uses a computer model developed by the Department of Transportation Volpe Center called the ''CAFE Effects and Compliance Model'' (''Volpe Model'').

[161] This EPA assessment of the Light-Duty Vehicle TSD was contained in the Advanced Notice of Proposed Rulemaking, Regulating Greenhouse Gas Emissions Under the Clean Air Act, 73 FR 44354, at 44444 (July 30, 2008).

[162] California Air Resources Board, EPA–HQ–OAR–2006–0173–9006, at 21.

[163] California Air Resources Board, EPA–HQ–OAR–2006–0173–9019.6. at 1.

[164] California Air Resources Board, EPA–HQ–OAR–2007–0173–9019.7.

[165] For example, this updated analysis included factors such as consideration of multi-year planning cycles available to manufacturers, consideration of CO_2 trading between car and truck fleets within the same manufacturer, and inclusion of plug-in hybrids as a viable technology beginning in 2012. Advanced Notice of Proposed Rulemaking, Regulating Greenhouse Gas Emissions Under the Clean Air Act, 73 FR 44354, at 44444 (July 30, 2008).

[166] California Air Resources Board, EPA–HQ–OAR–2006–0173–9006, at 21.

[167] *Id.*

[168] *Id.* at 23.

[169] California Air Resources Board, EPA–HQ–OAR–2006–0173–9019.12.

credits for 2009 and 2010 and a debit for 2011, but an overall credit for the three-year period. CARB noted that because this was done on a worst-case testing basis, it is likely that testing with additional vehicles in each test group would show even the debiting companies in compliance.[170]

Second, CARB looked at the compliance projection for the major domestic manufacturers (Ford, GM and Chrysler) for the 2009 and 2010 model years.[171] CARB used the actual 2009 model year registration data (from Polk) and, then, applied CO_2 emissions data by vehicle model obtained from EPA, selecting the highest CO_2 emissions data for those vehicle models with multiple engines. The results showed that for the 2009 model year, GM and Ford have ample compliance margins for both PC/LDT1 and LDT2/MDV, while Chrysler has a debit for its PC/LDT1 fleet, but a wide margin for its LDT2/MDV fleet. The overall net result is compliance for all three companies. For 2010, the three companies run debits for PC/LDT1 but have compliance margins for LDT2/MDV (a small margin for GM, and substantial margins for Ford and Chrysler). Again, based on the use of accumulated credits, these companies would comply with the model years analyzed.

Third, CARB focused on just GM for the 2009 model year, using a different technique than their study directly above.[172] CARB used certification data provided by GM, projected sales based on GM's latest manufacturer update to CARB, and CO_2 results provided by EPA. Then each GM certification test group was divided by GM into sales sub-groups, each having one or several vehicle models. For each sub-group, the CO_2 emissions of the highest emitting model were multiplied with the total number of vehicles in the subgroup to calculate the sub-group's GHG value. The GHG values from all sales subgroups in a test group were summed up to represent the sales group GHG value. For the 2009 model year, under this analysis, the GM PC/LDT1 fleet over-complies by 14 grams per mile and the LDT2/MDV fleet over-complied by 27 grams per mile, generating substantial credits for 2010 and beyond.

Additional support for 2009–2011 compliance was provided by the Natural Resources Defense Council. At EPA's March 5, 2009 waiver hearing, NRDC presented testimony regarding the technological feasibility of the GHG standards for the early years of compliance. NRDC performed its analysis by using EPA fuel economy trends data for MY 2008, which predicted a national average fuel economy level without CAFE credits for flexible fuel vehicles. NRDC then converted the miles per gallon numbers to CO_2 grams per mile levels using the California sales mix and the GHG conversion established by CARB. The result is that industry accrues substantial amount of credits in 2009 and 2010, and then runs a small deficit in 2011 that can be easily made up using banked credits from the first two years.[173]

Beyond submitting results from its own recent analyses, CARB submitted a very recent (March 2009) study by Energy & Environmental Analysis (EEA) entitled ''Automakers Ability to Comply with California GHG Standards Through 2012.'' [174] The EEA study notes that, if the California waiver is granted, manufacturers would be required to comply with standards for MY 2009 vehicles, which are already in production and being sold, and would have very little lead time to make changes for MY 2010 (which will start production in mid-calendar year 2009), and limited opportunity to make changes at this point for MY 2011 and 2012. EEA looked at the product plans for the ''Big Six'' manufacturers in the U.S. (GM, Ford, Chrysler, Toyota, Honda and Nissan) based on commercially available data, and from public information reported in the trade press, as well as the information submitted by the manufacturers to the Federal government in connection to the auto restructuring plans.[175] Generally, because of projected large sales of hybrids and to a lesser extent, sales of diesel vehicles, EEA projected that Toyota and Honda will meet California GHG standards through 2012, and that Nissan may have a shortfall in LDV/LDT1 for 2012, but will easily comply with LDT2/MDV in 2012, and will be able to meet the 2012 standards by trading between categories and using banked credits from prior years.

For the domestic manufacturers, EEA noted concerns about compliance with the California GHG standards, in part because these companies have Federal CAFE values which are significantly below the three Japanese companies, meaning that it will be harder for them to reach the target. Nevertheless, the EEA report noted that the product plans of these companies show the following industry-wide technology improvements coming on line in the next 4 to 5 years:

—Luxury vehicles adopting GDI across most product lines;
—4 valve OHC/DOHC engines with VVT replacing the few remaining 2-valve OHC 4 and 6 cylinder engines;
—6-speed transmissions replacing 4 or 5 speed units in most mass market vehicles
—Electric power steering replacing hydraulic units in compact and mid size cars;
—Cylinder cut-out applications to V–8 and some V–6 units;
—Variable valve lift used more widely by Japanese manufacturers;
—Introduction of several new diesel models and hybrid models by all manufacturers;
—Introduction of new small ''crossover'' SUV and car models that are one size class below the existing smallest models offered by the domestic manufacturers to compete with the Toyota Scion XD and XB models and the Honda Fit model.

To perform the GHG estimate, the EEA study used the actual fuel economy data by vehicle model for MY 2009, and used the product-plan based technology forecasts to derive fuel economy by model for MY 2010 through 2012. For sales numbers, EEA used 2008 sales data and sales for the first two months of 2009 both nationally and for California as sales indicators for the near term (MY 2009 and 2010). For 2011 and 2012, EEA used the sales forecast it had developed in the 2008 DOE study, which was a 15 million annual sales level of light duty vehicles nationally. The power train mix numbers (engine/transmission combinations) for all years were the 2008 numbers because this was the latest data available from the CAFE data base.

Using this approach, EEA found that all three domestic manufacturers are in

[170] California Air Resources Board, EPA–HQ–OAR–2006–0173–9006 at 24.

[171] California Air Resources Board, EPA–HQ–OAR–2006–0173–9019.13. CARB limited this particular analysis to the domestic manufacturers because, in its assessment, ''the international auto companies are better positioned to comply and will unquestionably meet early model year standards.'' As summarized in the first (industry-wide) CARB analysis, although at least one international manufacturer (BMW) projected a slight debit for 2009, all the manufacturers were projected for overall compliance for the period 2009–2011.

[172] California Air Resources Board, EPA–HQ–OAR–2006–0173–9019.14.

[173] Natural Resources Defense Council, EPA–HQ–OAR–2006–0173–7176.13, at 5–6. The NRDC testimony also noted that developments in the period between the first waiver hearing (May 2007) and the new hearing strengthen the California case that the GHG standards are cost-effective and technically feasible—namely, higher gas prices, the market shift to cleaner cars and the passage of new Federal fuel economy standards.

[174] California Air Resources Board, EPA–HQ–OAR–2006–0173–9019.15.

[175] EEA completed a detailed study of product plans for the Big Six manufacturers for the U.S. Department of Energy in late 2008, and they used that study as a baseline for this report on California GHG compliance.

compliance with current and expected CAFE through 2012, with Chrysler lagging somewhat behind Ford and GM. EEA then translated these forecasts to GHG forecasts for the California vehicle class definitions, assuming no A/C improvement credits or alternative fuel credits, and no trading of credits between manufacturers, and predicted as follows:

—All manufacturers will comply with GHG requirements for 2009;
—GM and Chrysler will comply with GHG regulation in 2010 while Ford is on the edge of compliance. Ford can likely comply by either using banked credits from 2009 or with small adjustments to the power train and sales mix sold in California if necessary;
—Chrysler and GM may be able to meet 2011 GHG standards using banked credits from 2009 and 2010 and credit trading between classes. All three manufacturers could require additional efforts such as air conditioner improvements to comply with 2011 GHG requirements.
—Compliance with 2012 GHG requirements will be a challenge and may require credit trading and banked past and future credits over and above credits from air conditioner improvements and introduction of alternative fuel vehicles.
—The results appear to be very realistic based on the auto-manufacturers public statements of future fuel economy.[176]

Regarding the long-term (MY 2012 and later) outlook, CARB compared the restructuring plans submitted by the automakers to the arguments manufacturers made in this proceeding, regarding later model year feasibility. CARB stated that ''by 2015, even those manufacturers facing the most difficult challenge complying with California's standards have made statements that on their face show they plan to comply with the later model years standards, even before receiving additional credit for GHG reductions from air conditioning improvements and regardless of 2009 and 2010 credits carrying forward.'' [177] For example, CARB cited from the GM restructuring plan that the company stated that it will work to develop any changes needed to * * * meet such additional requirements as California's.[178] Further, at EPA's March 5, 2009 hearing, NRDC pointed out that the plans of both GM and Ford show MY 2012 fuel economy levels for cars and light trucks fleet average that come very close to allowing the automakers to comply with the GHG standards with little or no additional effort.[179] Additionally, CARB noted that Chrysler stated that, should this GHG waiver be granted, the company would try its best to comply using available technology; however, as a last resort it might restrict sales of certain vehicle models in California and other states adopting the California standards, out of necessity.[180] Finally, regarding Ford, NRDC stated in its testimony that Ford plans to improve the average fuel economy by 26 percent by 2012 and by 36 percent by 2015.[181]

4. Manufacturers' Comments on the Technological Feasibility of the GHG Standards

Manufacturers raised arguments regarding the feasibility of the CARB GHG standards both in the underlying rulemaking in California, and in the EPA waiver proceeding. In the CARB rulemaking, the manufacturers generally criticized some aspects of the CARB modeling work that substantiated CARB's conclusions on technological feasibility. For example, a manufacturer argued that CARB overestimated the emission reductions from the powertrain changes in many of the technology packages used in the modeling studies, such as the NESCAAF study. Because the studies assumed changes in the use of advanced transmissions and engines in such a magnitude to be unrealistic for the U.S. fleet, the manufacturer stated that the changes would require retooling of all U.S. driveline plants, perhaps more than once.[182] Manufacturers also argued that the modeling of technology packages risked ''double-counting'' emission benefits produced by the individual technologies, thus producing an unrealistic estimate of emission reductions.[183] CARB responded to these comments by stating that manufacturers were already planning to incorporate advanced transmissions and engine technologies in their vehicles, and that the gradual phase-in of the CARB standards allowed manufacturers to accomplish this during regular scheduled vehicle upgrades. CARB also noted that its modeling done by AVL specifically avoided double-counting (while some manufacturers' modeling did not).

Regarding the EPA waiver proceeding, while the manufacturers did take issue with some of the CARB modeling work during the CARB rulemaking, the manufacturers did not challenge CARB's general conclusions that the necessary technology presently exists to meet the near-term standards, that projected control technologies for future years have been identified, and that objections raised by industry have been answered. Rather, the industry offered an assessment that much of this technology is already at hand. At the first EPA hearing in March 2007, although no individual manufacturer presented testimony, the Alliance of Automobile Manufacturers discussed the progress of the industry in producing more fuel-efficient vehicles. The Alliance stated that ''every model available today is equipped with some kind of fuel efficient technology, including direct fuel injection, variable valve timing, continuously variable transmissions, cylinder deactivations, and more.'' [184] These technologies in the 2007 and 2008 MY vehicles are among those that CARB projected as being in use for the near-term GHG standards (see above discussion on ''Overview of Technologies and Their Projected Applications,'' section VI.B.2).

In comments sent to EPA after the March 2007 hearing, the industry commenters focused on whether there was adequate lead time to comply with the near-term standards, citing testimony from a CARB official (in the Vermont litigation) that some manufacturers may need up to six years to comply with the 2011 MY standards and up to 7 years to comply with the 2012 MY standards.[185] Also, the industry criticized CARB for not providing sufficient information on some technology issues for the EPA (or the public) to make an informed decision.[186] CARB responded to these

[176] California Air Resources Board, EPA–HQ–OAR–2006–0173–9019.15.

[177] California Air Resources Board, EPA–HQ–OAR–2006–0173–9006, at 27.

[178] California Air Resources Board, EPA–HQ–OAR–2006–0173–9021.1, at 21.

[179] Natural Resources Defense Council, EPA–HQ–OAR–2006–0173–7176.13, at 4.

[180] California Air Resources Board, EPA–HQ–OAR–2006–0173–9020.2, at U116, and California Air Resources Board, EPA–HQ–OAR–2006–0173–9020.3, at 118–120.

[181] Natural Resources Defense Council, EPA–HQ–OAR–2006–0173–7176.13, at 4, citing from Ford Motor Company Business Plan, Submitted to the House Financial Services Committee, December 2, 2008.

[182] California Air Resources Board, EPA–HQ-OAR–2006–0173–0010.116, Comment 154 (at 107) and Comments 158–159(–115).

[183] California Air Resources Board, EPA–HQ–OAR–2006–0173–0010.116, Comment 162 at 117.

[184] Testimony of Alliance of Automobile Manufacturers, EPA–HQ–OAR–2006–0173–0422, at 98.

[185] Association of International Automobile Manufacturers, EPA–HQ–OAR–2006–0173–1455.2 at 11–12. The litigation in Vermont is *Green Mountain Chrysler-Plymouth Dodge-Jeep* v. *Crombie,* 508 F. Supp, 295 (D. Vt.).

[186] Alliance of Automobile Manufacturers, EPA–HQ–OAR–2006–0173–1297.2 at 35–36.

points, stating that the CARB official also testified that most of the CARB-identified technologies are already developed and required only a few years of lead time for implementation. Additionally, based on lead time beginning at the time of the final adoption of the standards by CARB (August 2005), CARB notes that the 6 or 7 year lead time for the 2011 and 2012 model years respectively is reasonable.[187] CARB also provided, in its June 2007 and July 2007 comments, information from the Vermont litigation where various manufacturers testified that they would be able to meet the early years of the California GHG standards.[188] Concerning the list of technical issues on which the industry claimed CARB had not provided enough information to allow public comment, CARB stated that these issues were among many issues previously addressed fully both in submissions to the Docket (primarily the CARB Final Statement of Reasons) as well as in the Federal litigation.[189]

Manufacturers also presented information on technological feasibility at EPA's March 5, 2009 hearing and the subsequent comment period. At the EPA hearing, the Alliance continued to acknowledge technological advances in GHG control. The Alliance stated that ''automakers have made major contributions into developing new fuel efficient technologies and the results are now coming to dealer showrooms. More than 50 technologies offered in vehicles today reduce emissions, increase mileage and allow vehicles to run on cleaner fuels.'' [190] Regarding technological feasibility for the early years (near-term), the industry trade groups generally argued that CARB relied on manufacturer credits for these years to provide a cushion for compliance in the later years, but that the several years of lead time required for mid-term compliance combined with uncertainty resulting from the EPA waiver denial makes even the near-term lead time inadequate.[191] CARB, in its testimony and subsequent comments, presented its new analyses of compliance (for the industry in general, and for GM) that showed industry compliance is likely if not certain for the 2009 through 2011 model years (see discussion above at section VI.B.3.). Additionally, if any individual manufacturers incur a debit in any model year, the CARB regulations provide the manufacturer up to five model years afterwards to make up the debit to avoid any noncompliance penalty.

Regarding the mid-term (2012–2016) model years of the GHG standards, the industry commenters have argued that the only means by which most large-volume manufacturers will be able to meet the CARB standards is by ''mix-shifting'' their product lines to offer for sale more higher mileage vehicles to ensure meeting the CARB fleet average.[192] The Alliance stated that ''it is simply too late for manufacturers to meet all the Pavley standards for future model years through the use of technologies, if for no other reason than because approximately 18 months of the product planning and development cycle was pretermitted while the waiver was denied (assuming for purposed of this analysis that a waiver would be granted in June 2009).'' [193] As discussed earlier, CARB responded to these arguments by noting that in the restructuring plans recently submitted to the government, the manufacturers have made statements demonstrating they plan to comply with the later model years of the CARB standards, even before receiving additional credit for GHG reductions from air conditioning improvements and regardless of 2009 and 2010 credits carrying forward. Regarding the manufacturers' mix-shifting argument, EPA notes that under the narrow standard of review applied to California's technological feasibility determinations, consistency with section 202(a) does not mean that all manufacturers will be able to sell all vehicle models in California and that a reduced product offering in California resulting from California emission standards is a policy decision left to the state.[194]

C. Technological Feasibility and the Cost of Compliance

1. Historical Approach

Congress has stated that the consistency requirement of section 202(a) relates to technological feasibility.[195] Section 202(a)(2) states, in part, that any regulation promulgated under its authority ''shall take effect after such period as the Administrator finds necessary to permit the development and application of the relevant technology, considering the cost of compliance within that time.'' Section 202(a) thus requires the Administrator to first review whether adequate technology already exists, or if it does not, whether there is adequate time to develop and apply the technology before the standards go into effect.

In *MEMA I,* the court addressed the cost of compliance issue at some length in reviewing a waiver decision. According to the court:

> Section 202's cost of compliance concern, juxtaposed as it is with the requirement that the Administrator provide the requisite lead time to allow technological developments, refers to the economic costs of motor vehicle emission standards and accompanying enforcement procedures. *See* S. Rep. No. 192, 89th Cong., 1st Sass. 5–8 (1965); H.R. Rep. No. 728 90th Cong., 1st Sass. 23 (1967), *reprinted in* U.S. Code Cong. & Admin. News 1967, p. 1938. It relates to the timing of a particular emission control regulation rather than to its social implications. Congress wanted to avoid undue economic disruption in the automotive manufacturing industry and also sought to avoid *doubling or tripling* the cost of motor vehicles to purchasers. It, therefore, requires that the emission control regulations be technologically feasible within economic parameters. Therein lies the intent of the cost of compliance requirement.[196]

Previous waiver decisions are fully consistent with *MEMA I,* which indicates that the cost of compliance must reach a very high level before the EPA can deny a waiver. Therefore, past decisions indicate that the costs must be excessive to find that California's standards are inconsistent with section 202(a).[197] It should be noted that, as with other issues related to the determination of consistency with

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[187] California Air Resources Board, EPA–HQ–OAR–2006–0173–3601, at 26–27.

[188] CARB referenced the industry assessments of early model year compliance from the litigation in Vermont, *Green Mountain Chrysler-Plymouth Dodge-Jeep* v. *Crombie,* 508 F. Supp, 295 (D. Vt.), California Air Resources Board, EPA–HQ–OAR–2006–0173–1686 at 20–21, California Air Resources Board, EPA–HQ–OAR–2006–0173–3601, at 27–28.

[189] The list of issues and the CARB response are discussed in the CARB July 2007 letter. EPA–HQ–OAR–2006–0173–3601, at 26.

[190] Testimony of Association of Automobile Manufacturers, EPA–HQ–OAR–2006–0173–7177, at 108.

[191] Association of Automobile Manufacturers, EPA–HQ–OAR–2006–0173–8994.1, at 24–25; Association of International Automobile Manufacturers, EPA–HQ–OAR–2006–0173–9005.2 at 4.

[192] Regarding mix-shifting, the National Automobile Dealers Association also commented that this would be costly to dealers who would lose business due to the ''scrappage effect'' (see above pp 46–49), being forced to accept smaller vehicles regardless of local consumer demand, rationing of larger vehicles, and out-of state dealers unencumbered by CARB's regulations. National Automobile Dealers Association, EPA–HQ–OAR–2006–0173–8956.1, at 8–9.

[193] Association of Automobile Manufacturers, EPA–HQ–OAR–2006–0173–8994.1 at 26.

[194] 40 FR 23102, 23103 (May 28, 1975).

[195] H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 301 (1977).

[196] *MEMA I* at 1118 (emphasis added). *See also id.* at 1114 n. 40 (''[T]he 'cost of compliance' criterion relates to the timing of standards and procedures.'').

[197] *See, e.g.,* 47 FR 7306, 7309 (Feb. 18, 1982), 43 FR 25735 (Jun. 14, 1978), and 46 FR 26371, 26373 (May 12, 1981).

section 202(a), the burden of proof regarding the cost issue falls upon the opponents of the grant of the waiver.

Consistent with *MEMA I,* the Agency has evaluated costs in the waiver context by looking at the actual cost of compliance in the time provided by the regulation, not the regulation's cost-effectiveness. Cost-effectiveness is a policy decision of California that is considered and made when California adopts the regulations, and EPA, historically, has deferred to these policy decisions. EPA has stated in this regard, ''the law makes it clear that the waiver request cannot be denied unless the specific findings designated in the statute can be made. The issue of whether a proposed California requirement is likely to result in only marginal improvement in air quality not commensurate with its cost or is otherwise an arguably unwise exercise of regulatory power is not legally pertinent to my decision under section 209 * * *'' [198] Thus, under the language of section 202(a)(2), EPA will look at the compliance costs for manufacturers in developing and applying the technology with the costs being broken down on a cost per vehicle or unit basis.

2. Technology Cost Information in This Proceeding

At the time of CARB's original waiver request, CARB presented the projected technology costs for the GHG vehicle standards based on cost estimates for necessary components provided by Martec, the company that did the modeling studies that produced the CARB technology assessment in its ISOR. The costs were calculated by applying a mark-up factor, determined by the Argonne National Laboratory, for the components needed for the vehicles. Additionally, CARB assumed an additional 30% discount for a limited number of components where unanticipated improvements in production processes or simplifications or consolidation in parts after additional further development would be likely.[199]

At that time, CARB stated that the average cost of control for near-term technology packages on PC/LDT1 category vehicles was estimated at $383 per vehicle, and for LDT2/MDV category vehicles was estimated at $327 per vehicle. Performing similar calculations for the mid-term technology packages, CARB put the estimates for PC/LDT1 at $1,115, and for LDT2/MDV at $1,341. CARB also presented information on the estimates of costs for the ''major 6'' manufacturers cost of compliance over the term of these standards. These figures ranged from $0 (for the three Japanese companies and GM) for the 2009 MY (*i.e.,* the fleets of these companies would comply with the 2009 standards with no changes) to the highest costs in the 2016 MY, with a $1,288–$1,341 range for the domestic manufacturers and a $272–$298 range for the Japanese manufacturers.

During the CARB GHG rulemaking, the manufacturers commented that CARB underestimated costs of individual technologies because CARB did not use the manufacturers' costs to individually develop each of the technologies, and CARB used a mark-up factor for final technology cost that was too low. The Alliance commissioned a study by Air Improvement Resources, NERA Economic Consulting, and Sierra Research (the above noted ''June 2007 AIR/NERA/Sierra Study'') that found the average vehicle cost increase to be about $3000, several times larger that the CARB estimates. In response, CARB provided a detailed critique of why the cost conclusions in this study were not reasonable. CARB found faulty technical analysis and inflated component costs.[200] In the time period since the CARB request, CARB has updated its technology cost estimates with new real-life information to show that manufacturers are continuing to implement the GHG technology packages and combinations CARB had identified at the outset—at costs in line with CARB's projections.[201]

EPA also received comments from the National Auto Dealers Association (NADA) and the National Association of Minority Automobile Dealers (NAMAD) concerning the costs of the CARB standards to its constituents, above the costs that GHG technology adds to the vehicle price to buyers. NADA notes that because of ''dire financial straits'' in the auto industry due to the economic recession, dealers are experiencing financial difficulties from vastly reduced vehicle sales (among other problems). NADA believes that if this waiver is granted, and the various other states which have adopted the GHG standards begin their own programs, the result will be a ''state-by-state patchwork approach to fuel economy that would fill their lots with more unsold vehicles.'' [202] NAMAD believes that ''dealer will lose sales if automakers have to ration delivery of large vehicles in CARB (Section 177) states to meet the fleet average, and * * * if dealers are forced to take delivery of more small cars that their customers don't want, dealers will be stuck paying the interest charges while these vehicles sit on their lots.'' [203] EPA notes the comments of NADA and NAMAD on this particular type of cost, but also notes that these comments are not relevant to the issue of whether the technology feasibility of the GHG standards are consistent with section 202(a). The comments regarding the ''patchwork'' of the GHG standards in other states are discussed below in section VII. B. 2.

3. Consistency of Certification Test Procedures

The enforcement procedures that accompany California's greenhouse gas standards would also be inconsistent with section 202(a) if the California test procedures impose testing requirements inconsistent with the Federal testing requirements. Such inconsistency means that manufacturers would be unable to meet both the California and the Federal test requirements with the same test vehicle.[204]

CARB stated in its December 2005 Waiver Request letter that there ''are no Federal test procedures that measure GHG for climate change purposes, [so] there are no potential inconsistencies precluding a manufacturer from using the same test vehicle to meet both Federal and California requirements'' and noted in its most recent (April 2009) comment letter that this was still true.[205]

EPA received no comments suggesting that CARB's GHG testing requirements pose a test procedure consistency problem with federal test procedures.

4. Safety Implications of the CARB GHG Standards

The industry raised a vehicle safety issue for consideration within the technological feasibility criterion. The industry has proffered the idea that the CARB GHG standards will result in the production of vehicles which will be unsafe for two reasons. First, they claim

[198] 36 FR 17158 (August 31, 1971). *See also* 40 FR 23102, 23104; 58 FR 4166 (January 7, 1993), LEV Waiver Decision Document at 20.

[199] California Air Resources Board, EPA–HQ–OAR–2006–0173–0004.1 at 40.

[200] California Air Resources Board, EPA–HQ–OAR–2006–0173–0010.116 at 141–155.

[201] California Air Resources Board, EPA–HQ–OAR–2006–0173–1686 at 19, and EPA–HQ–OAR–2006–0173–3601 at 28–29. CARB also notes that in the Green Mountain case, 508 F. Supp. 2d at 365–366, the Court found that the industry consultant's (T. Austin) baseline assumptions and resulting cost estimates—double that of defendants' expert—were unsupported by the evidence.

[202] National Automobile Dealers Association, EPA–HQ–OAR–2006–0173–8956.1 at 5–6.

[203] Testimony of National Association of Minority Automobile Dealers, EPA HQ–OAR–2006–0173–7177, at 126–127.

[204] *See, e.g.,* 43 FR 32182 (Jul. 25, 1978).

[205] California Air Resources Board, EPA–HQ–OAR–2006–0173–0004.1 at 42 and EPA–HQ–OAR–2006–0173–9006 at 29.

that many GHG-compliant vehicles will achieve compliance because they will be downsized, and will be inherently less safe in collisions. Second, they claim that because GHG-compliant vehicles will also have higher fuel economy than today's fleet, owners will drive more, and that additional VMT means more accidents will occur. The industry asserts that because the GHG standards will cause these problems, the resulting vehicles are technologically infeasible because of the safety concerns.

EPA takes safety into account in evaluating technology, feasibility and lead time of California emission standards. For example, when CARB in 1994 requested authorization for its original set of emission standards for small spark-ignition engines used in utility, lawn and garden equipment, the industry trade association raised safety concerns in the EPA authorization proceeding. The industry argued that compliance with the CARB standards would require the use of catalyst technology in equipment, and that current catalysts produced high exhaust and surface temperatures, and could also possibly cause sparking and flaming, so these safety issues must be addressed before this technology could become feasible, and the authorization should be denied on that basis. EPA examined these safety issues within the traditional consistency with section 202(a) criterion, with the requisite deference given to CARB and the burden placed on those arguing that safety concerns should give cause for EPA to deny the authorization. CARB responded to the industry objections by offering a detailed review of steps necessary to refine small engine catalyst technology to meet the standards while reducing the high temperature risks, as well as identifying some current small engines that met the standards without using a catalyst. After reviewing all relevant information from CARB and other commenters on the safety issues (and other technological feasibility issues) the Administrator stated he was ''unable to make the finding that the CARB Tier 2 standards are not technologically feasible within the available lead time.'' [206]

In the California GHG proceeding, CARB has responded to the industry safety arguments, both during the underlying California rulemaking and in comments submitted to EPA in this waiver proceeding. In summary, CARB rejected the industry arguments in several ways. First, it pointed out that under the terms of AB 1493, CARB is precluded from requiring vehicle down-weighting as a means of achieving compliance. Second, CARB has laid out a broad pathway of potential technologies for achieving compliance for all vehicle types, none of which require any weight reduction of vehicles. Third, CARB notes that an industry study (Sierra 2004) shows that weight reduction is far from cost-effective and therefore becomes an unlikely compliance option. Fourth, CARB submitted reports from experts that tend to dispute any safety impacts from the GHG standards by demonstrating that any weight reduction that may be made to comply with the GHG standards need not adversely affect vehicle safety. Finally, the opponents VMT safety theory is entirely based on their flawed rebound and fleet turnover arguments (discussed above in section IV.C.2).

Regarding the safety issue, EPA notes that CARB has provided considerable evidence that its GHG standards can be met without any increase in concern regarding vehicle safety. Even accepting the industry arguments regarding the safety implications of downsizing—which are disputed by CARB, particularly for downsizing of larger vehicles—EPA cannot make the finding that the CARB standards are technologically infeasible because manufacturers may choose to use a method of compliance that is not as safe as the methods CARB has identified, particularly where there are many business reasons for manufacturers not to choose such a method. The burden, here, is on manufacturers to demonstrate that safety concerns with the technology available for compliance were unavoidable and substantial and that manufacturers would have no reasonable technological option available to them in the lead time provided for compliance. Based on the entire record, they have not made such a demonstration. Beyond this limited type of review under section 209(b), EPA's proper role is to leave for California the judgment of what greenhouse standards are appropriate in light of safety concerns raised by manufacturers.

With regard to the claim that increased VMT will increase the number of accidents, this argument is not relevant to the safety of the vehicle but to an outcome based on the possible actions or changes of driving patterns of people who own these vehicles. This argument does not go to the technological feasibility of the vehicle itself. This is a public policy argument that is left for California's discretion but is not relevant to the narrow technological feasibility analysis authorized for EPA under section 209(b).

For these reasons, EPA finds that the industry opponents of this waiver request, with respect to the vehicle safety impact of the CARB GHG standards have not met their burden of proof for EPA to find that these standards are not consistent with section 202(a) of the Act.

E. Conclusion on Technological Feasibility

After its review of the information in this proceeding, EPA has determined that CARB has demonstrated a reasonable projection that compliance with its GHG standards is reasonable, based upon the current and future availability of the described technologies in the lead-time provided and considering the cost of compliance. The industry opponents have not met the burden of producing the evidence necessary for EPA to find that California's GHG standards are not consistent with section 202(a).

With regard to motor vehicles required to meet the near-term standards for the 2009 through 2011 model years, the CARB technical information presented in this record clearly indicates that these requirements are feasible. CARB has presented the case that the industry as a whole will be able to meet these standards for this period—for the 2009 and 2010 model years—with compliance with the standards including credit generation, and for the 2011 model year—with a carry-forward of credits earned in the 2009 and 2010 model years. Within the industry, several manufacturers are not expected to need credits to comply in the 2011 model year. Moreover, California has provided several technological avenues that are currently available for meeting the 2011 MY standards without the need for credits. Manufacturers have provided no evidence that these technologies cannot be applied to meet the 2009–2011 MY standards.

For the mid-term standards, 2012 MY and beyond, CARB again identified various and reasonable technological avenues that manufacturers could use to meet the mid-term standards. CARB initially presented that the continued use of technologies identified for the near-term along with more sophisticated technologies and the expected upswing in hybrid-electric and diesel vehicles would result in industry compliance for these years. In its June 2007 comments,

[206] Decision Document, Authorization of California's Under 25 Horsepower Utility Lawn and Garden Equipment Engine Exhaust Emission Standards (ULGE) (July 5, 1995), EPA Docket A–91–01 at 61–70.

CARB noted that it expected manufacturers to use combinations of the initially introduced technologies to meet the mid-term standards and cited several examples of this already happening in several manufacturers' products. CARB also noted that in 2007, manufacturers were aggressively introducing new hybrid vehicles well ahead of the mid-term standards. For the longer term, as noted earlier, CARB states that ''by 2015, even those manufacturers facing the most difficult challenge complying with California's standards have made statements that on their face show they plan to comply with the later model years of standards, even before receiving additional credit for GHG reductions from air conditioning improvements and regardless of 2009 and 2010 credits carrying forward.'' [207]

In its comment submitted after EPA's March 5, 2009 hearing, CARB summarized the industry discussion on technological feasibility as follows:

> In our July 24, 2007 comments CARB stated ''* * * not a single manufacturer from either the Alliance or AIAM has independently presented any substantive comment concerning the principal and proper focus of the (EPA) proceeding—the technological feasibility and lead time for those manufacturers to comply with the subject greenhouse gas standards.'' Document ID No. EPA–HQ–OAR–2006–0173.3601 at 26. That statement remains true today, and stands in stark contrast to the renewed demonstration CARB has made in this reconsideration proceeding.[208]

Regarding the lead time provided by California to meet the near-term and the mid-term and later standards, the commenters have not met their burden to show that the lead time is insufficient. California provided manufacturers 4–5 years before the near-term GHG standards would go into effect and 8–9 years before the later standards, giving substantial time for development of technologies to meet the standards. The industry commenters have not shown that this lead time was insufficient, both for the near-term GHG standards, that were based on technologies already known and developed, as well as for the mid-term GHG standards, where CARB provided a reasonable pathway to be followed—answering theoretical objections, identifying major steps needed to refine technology, and offering plausible reasons for predicting successful technologies.[209]

Regarding the cost component of the technological feasibility test, EPA believes that the opponents of the waiver have not met the burden of proof to show that the GHG standards are not technologically feasible because of excessive cost. The industry cost study (from Sierra Research) from the CARB rulemaking found an average vehicle cost increase of about $3,000 to comply with the CARB standards, an increase which CARB rebutted in detail, and which was also found not credible by the district court in the Vermont litigation. Alternatively, even if the industry estimates were closer to the mark than the CARB estimates, CARB points out that Congress was concerned with standards causing a *doubling or tripling* of vehicle costs (MEMA 627 F.2d at 1118), not the cost increases that CARB has projected (ranging from under $100 for some manufacturers in near-term to a maximum of $1,100 to $1,350 for vehicles in the 2016 MY).[210]

Therefore, for the above reasons, I am unable to find that the CARB GHG motor vehicle emission standards are not technologically feasible within the available lead-time giving consideration to the cost of compliance.

F. Other Issues Related to Consistency With Section 202(a)

1. Impact of EPA's March 6, 2008 Denial on Lead Time

In EPA's February 12, 2009 **Federal Register** notice, EPA specifically sought comment on the effect of the March 6, 2008 Denial on whether CARB's GHG standards are consistent with section 202(a), including lead time.

In comments submitted for this reconsideration, the industry commenters asserted that any lead time clock that may have been running should have stopped completely and immediately upon EPA's March 6, 2008 Denial. Both the Alliance of Automobile Manufacturers and the Association of International Automobile Manufacturers noted that even CARB officials testified that manufacturers should have started development of their 2010–2012 MY product lines at the time the final standards were finalized in the 2004–2005 time frame, and that there should be a presumption that the industry could and would stop ongoing development efforts when this waiver was denied.[211] In its comments, the Alliance noted that it should not be assumed that a ''retroactive'' waiver would impose no hardship because manufacturers are able to earn credits for sales for the 2009 and 2010 MYs in advance of any waiver grant. They claim that the regulated parties would have conducted their business differently if they knew in advance that these regulations would be enforced.[212]

On the other hand, CARB urges EPA to reject the argument that the March 6, 2008 Denial tolled the lead time countdown. CARB noted that it always maintained that it intended to enforce the GHG standards from their start point for the 2009 MY, discussed how it pursued promptly all available avenues to overturn the March 6, 2008 Denial, and noted that the denial was all but guaranteed to be revisited because its waiver request was supported by both candidates for President in 2008. Additionally, CARB argues that any period the March 6, 2008 Denial was in effect was not significant compared to the four to ten years of lead time available to the manufacturers, and that technological advancements continued to appear during the denial period.

The manufacturers argue that EPA's earlier denial was reasonably relied upon by manufacturers, that the denial tolled or suspended lead time and allowed them to stop working towards compliance, which affects the adequacy of the lead-time for California's standards. This amounts to an argument that they reasonably had the opportunity to stop work towards

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[207] California Air Resources Board, EPA–HQ–OAR–2006–0173–9006 at 27.

[208] California Air Resources Board, EPA–HQ–OAR–2006–0173–9006 at 29. CARB also noted, that in the final efforts to persuade EPA to deny this waiver, waiver opponents cited policy arguments against the waiver, such as the preference for a uniform national standard to avoid a ''patchwork'' of state regulations, rather than any attack on the technological feasibility of the standards.

[209] Regarding lead time, some industry comments suggest that EPA should count lead time from the time the waiver is granted. EPA, however, believes that lead time should run from the time the rule is adopted by California. As EPA made clear in its waiver decision for California's standards regulating medium-duty motor vehicles (59 FR 48625 (Sept. 22, 1994), Decision Document at 39–41), lead time should generally be measured from the point at which California adopts its regulations. At that point, the regulations, and their obligations on regulated parties, are clear. EPA measures lead time for its regulations from the time of promulgation, which is analogous to California's adoption of its regulations. EPA review of CARB waiver requests causes no more uncertainty than judicial review of EPA regulations. In addition, California and regulated parties do not know when EPA will make a final decision on a request for waiver of preemption, so California would have little ability to evaluate lead time at the time it adopts its standards if lead time were based on a future action by another entity the timing of which is uncertain. In any case, the commenters have not shown that the amount of lead time provided from the date of the waiver is insufficient.

[210] California Air Resources Board, EPA–HQ–OAR–2006–0173–0010.14 at 80–83 and, EPA–HQ–OAR–2006–0173–0004.1 at 39–40.

[211] Alliance of Automobile Manufacturers, EPA–HQ–OAR–2006–0173–8994.2 at 27, and, Alliance of International Automobile Manufacturers, EPA–HQ–OAR–2006–0173–9005.2 at 16, Note 4.

[212] Alliance of Automobile Manufacturers, EPA–HQ–OAR–2006–0173–8994.2 at 23–25, *see also* National Automobile Dealers Association, EPA–HQ–OAR–2006–0173–8956.1, at 10–12.

compliance at that point if they chose. However it does not change the basic issue before EPA: whether the manufacturers, as opponents of the waiver, demonstrated that the standards are not consistent with section 202(a) because of inadequate lead time.

Based on a review of the entire record, and even assuming the reasonableness of the manufacturers' claim that they could have reasonably stopped work towards compliance upon the March 6, 2008 Denial, the industry commenters have not shown that the lead time provided under these circumstances was insufficient. This is particularly true regarding the near-term GHG standards, which were based on technologies already known and developed. But this is also true for the mid-term GHG standards, where CARB provided a reasonable pathway to be followed—answering theoretical objections, identifying major steps needed to refine technology, and offering plausible reasons for predicting successful technologies.[213] I believe that this is borne out by the evidence submitted to the record by CARB and the NRDC, which show industry-wide compliance with the near-term GHG standards and with future-term compliance attainable using technology developments as well as early credits. Manufacturers have not come forward with evidence to show that they cannot feasibly achieve the near-term or mid-term GHG standards, based on lead time. Although the industry trade association comments generally discussed manufacturers' reliance on the EPA waiver denial to suspend or stop planning for California compliance, no manufacturer came forward and asserted that it actually stopped planning. Whatever disruptions may or may not have occurred as a result of the denial, near-term standards have clearly been shown to be feasible and mid-term standards are clearly feasible given the lead time provided, even taking account of the denial.

Regarding implementation and enforcement by CARB for the 2009 MY, manufacturers claim that approving the waiver for that year would be a retroactive grant of a waiver and would be improper. However, approval of the waiver for the 2009 MY technically would not be a retroactive action. EPA would not be determining that past conduct was or was not lawful when it occurred in the past, or rewriting past legal obligations. The legal obligation at issue is still a future obligation—compliance with the annual fleet-averaging requirements for the 2009 MY standards by the end of 2009, based on sales throughout the year. The fact that some conduct which occurred in 2009 prior to the grant of the waiver is relevant to determining compliance with the 2009 MY obligation, after the end of the model year, does not by itself make the obligation to comply with the 2009 MY standards a retroactive legal obligation. In any case, even if a waiver for the 2009 MY was considered to impose retroactive obligations, EPA has the authority in an adjudication to take such action under appropriate circumstances.[214]

Under these circumstances, all of the evidence presented to date indicates that manufacturers will be in compliance with the 2009 standards. EPA is granting the waiver for 2009 and later years. However, out of an abundance of caution, and since any delay in granting this waiver stems from EPA's prior March 2008 Denial, EPA is imposing one specific limitation designed to ensure that CARB not hold a manufacturer liable or responsible for any noncompliance civil penalty action that could be caused by emission debits generated by a manufacturer for the 2009 model year. For the 2009 model year, CARB can fully implement and enforce its regulations, including implementation of CARB's Executive Orders for 2009 model year families issued both before and after the date of today's waiver, as described below. While debits from model year 2009 may offset credits generated in later years, and reduce the amount of credits available to a manufacturer, any debits from model year 2009 may not be used as a basis for holding a manufacturer in noncompliance and no civil penalties may be assessed based on such debits. Other than that restriction, CARB may fully implement and enforce, and manufacturers may use the GHG standards program as promulgated, such that CARB may implement certification for MY 2009 motor vehicles, and may grant manufacturers credits that can be used for future obligations. This restriction on handling of any possible debits appropriately limits any potential concern raised by manufacturers over their potential reliance upon EPA's previous waiver denial.

2. Endangerment of Public Health or Welfare

a. Is it Appropriate To Review Endangerment of Public Health or Welfare Under the ''Consistency With Section 202(a)'' Criterion?

EPA has traditionally stated that a state standard would be inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology, given the cost of compliance within that time, or if the Federal and State test procedures impose inconsistent certification requirements.[215] The legislative history of this provision and judicial precedent indicate that technological feasibility in the lead time provided was intended to be the primary focus of this criterion.[216]

However, several industry commenters have suggested that in the context of this waiver, it is also appropriate for EPA to include endangerment to public health or welfare in its evaluation of consistency with section 202(a). They note the language in section 202(a)(1) of the Clean Air Act that requires the Administrator to promulgate standards ''applicable to the emission of any air pollutant * * * which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.''

While acknowledging the limits of EPA's traditional review under the ''consistency with section 202(a)'' criterion, they note that previous waivers have generally reviewed standards designed to reduce concentrations of air pollutants, like criteria air pollutants that EPA has listed under section 108 of the CAA, for which an endangerment finding required under section 202(a)(1) has already been made. Even standards regulating PM and formaldehyde, for which EPA has granted waivers, involved pollutants that had been identified by EPA, or by Congress in the Clean Air Act, as needing regulation. Thus, the question of endangerment was not in dispute in previous waivers. By contrast, EPA has not made any final decision regarding whether emissions of GHGs from new motor vehicles cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare (this two-part

[213] EPA notes here (again) that lead time begins when California promulgates its standards, not when the waiver is granted.

[214] *Securities and Exchange Commission* v. *Chenery Corp.,* 332 U.S. 194 at 203 (''That such action might have a retroactive effect was not necessarily fatal to its validity. Every case of first impression has a retroactive effect, whether the new principle is announced by a court or by an administrative agency. But such retroactivity must be balanced against the mischief of producing a result which is contrary to a statutory design or to legal and equitable principles. If that mischief is greater than the ill effect of the retroactive application of a new standard, it is not the type of retroactivity which is condemned by law.'').

[215] 68 FR 19811, 12 (April 22, 2003).

[216] *MEMA III,* 142 F. 3d at 463; *Ford,* 606 F. 2d at 1296, n. 17, 1297; H.R.Rep, No. 728, 90th Cong, at 22–23.

test is hereafter referred to as ''endangerment''). This is a requirement for EPA to issue regulations under section 202(a).[217] Thus, the commenters state that there is an issue for review in this waiver under the consistency with section 202(a) criterion that was never relevant for EPA's review of previous waiver requests.

In contrast, CARB states that no new test of consistency with section 202(a) is warranted or permissible. CARB argues that precedent shows that nothing more than technological feasibility and test compatibility is required under section 209(b)(1)(C).

I find that in this instance, I do not need to resolve the issue of whether it is appropriate to address the issue of endangerment under the consistency with section 202(a) criterion of section 209(b). This is because in this instance, I find that even if the issue of endangerment is relevant to EPA's evaluation of consistency with section 202(a), those opposing the waiver have not met their burden of proving that California's regulations are inconsistent with section 202(a) based on that concern.

b. Parties Opposing the Waiver Have Not Met Their Burden of Showing Lack of Endangerment to Public Health or Welfare

As noted above, parties opposed to a waiver have the burden of proof to show that one of the findings under section 209(b)(1) should be made. To the extent that the two-part endangerment test is relevant to a determination of consistency with section 202(a), those opposing a waiver must affirmatively demonstrate that California's standards are inconsistent with this criterion. They have failed to do so in this instance.

Commenters who claim that EPA should deny the waiver generally base their claim on the fact that EPA has not yet determined whether greenhouse gas emissions from new motor vehicles cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, or promulgated greenhouse gas standards pursuant to section 202(a). They claim that unless and until EPA makes such a determination that authorizes regulation under section 202(a), EPA cannot grant a waiver to California. They also state that the fact that the current California waiver request pertains to global climate change emissions, rather than to conventional pollutants, means that EPA should not give California's waiver request a presumption of consistency under Section 209(b)(1)(C).

In contrast, commenters supporting the waiver request contend that EPA's lack of a determination on endangerment and lack of GHG emission regulations is not relevant to EPA's consideration of the waiver request. CARB notes in its comments that EPA may not find inconsistency on the ground that EPA must first make its own endangerment finding on GHG emissions before granting California's waiver request. CARB suggests that *Massachusetts* v. *EPA*'s contemplation of coordinated activity at the federal level is entirely irrelevant to the waiver. CARB also provides significant discussion on this issue providing evidence that, according to CARB, shows that global climate change does endanger public health and welfare.

Manufacturer suggestions that EPA should deny California's request because it has not yet made a finding of endangerment mistake the burden of proof that opponents of a waiver are obliged to meet before EPA must deny a waiver. To deny a waiver based on section 209(b)(1)(C), EPA must find that California's standards ''are not consistent with section 202(a).'' It is not enough that EPA has not made a decision on the subject of whether GHG standards are authorized under section 202(a). To deny a waiver the Administrator must affirmatively find that the standards are inconsistent with section 202(a). The initial presumption of consistency is not dependent on the pollutants being regulated, as suggested by commenters—the presumption is provided for in the statute.[218] Regarding endangerment, therefore, I believe that, to the extent it is even an appropriate criterion under section 209(b)(1)(C), it would not be appropriate to deny a waiver request unless it is affirmatively demonstrated that the pollutants being regulated do not ''cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.''

To the extent endangerment is relevant to whether California's standards are consistent with section 202(a), this criterion should be narrowly interpreted and should require more than the fact that EPA has not yet made a final decision concerning endangerment. Denial of a waiver based on this issue should require either a previous determination by EPA on the merits that the endangerment test has not been met, or a demonstration in this proceeding by the opponents of the waiver that EPA could not find that the endangerment test is met. Lack of a final decision by EPA on this would not be sufficient to deny the waiver. Those opposing the waiver cannot simply point to an open question regarding the issue at hand—on the contrary, they must come forward with evidence demonstrating that California's standards are not consistent with section 202(a).[219]

In order to regulate emissions of a particular pollutant under section 202(a), EPA must review several issues, including whether the emissions of the pollutant from motor vehicles cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare, and whether the standards are technologically feasible within the lead time provided. EPA has to make such determinations as part of lawfully adopting GHG standards under section 202(a). However, lack of either kind of action by EPA is not by itself evidence that GHG standards are in fact inconsistent with section 202(a). The fact that EPA has not yet made either determination, in the context of its own rulemaking, is by itself not a basis to deny a waiver.

Congress understood that California may act a ''laboratory for innovation'' in the regulation of motor vehicles, and intended section 209 to allow such innovation.[220] Yet the ability of California to encourage such innovation would be greatly compromised if EPA were to determine that California could take no action under section 209 unless EPA had already made all of the necessary determinations regarding the consistency of its own standards in the context of its own regulation under section 202(a).

In similar instances where EPA reviewed California standards and EPA had not promulgated similar standards, EPA has determined that the absence of EPA standards does not by itself preclude a waiver or prevent its ability to review California's standards under section 209. Any comparisons necessary

[217] On April 24, 2009, EPA published a notice proposing to find that elevated concentrations of greenhouse gases in the atmosphere are reasonably anticipated endanger the public health and welfare of current and future generations and also proposing to find that emissions of carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons from new motor vehicles and new motor vehicle engines are contributing to this air pollution under section 202(a) of the Clean Air Act. 74 FR 18885, 18886.

[218] See *MEMA I,* 627 F. 2d at 1121 (''The language of the statute and its legislative history indicate that California's regulations, and California's determination to comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them.'').

[219] See *MEMA I,* 627 F. 2d at 1126.

[220] *See MEMA I,* 627 F. 2d at 1111.

under section 209 would simply take account of the absence of EPA regulations, *i.e.,* the comparison would be California standards to the absence of EPA standards. For example, under the similar procedures of section 209(e), EPA authorized California to enforce its standards on evaporative emissions for small nonroad engines despite the fact that EPA had not yet promulgated evaporative standards for such engines.[221] In any case, commenters' discussions of ''comparisons to federal standards'' in this context is more suited to review of section 209(b)(1)(A), which discusses comparisons between California and applicable federal standards. Section 209(b)(1)(C) concerns whether California standards are consistent with section 202(a). This criterion is not dependent on the existence of comparable federal standards.[222]

An additional reason for interpreting the waiver criterion this way, and not determining inconsistency with section 202(a) based on lack of an EPA final decision on an issue, is that EPA may always take action in the future that may impact the criteria for a waiver. For example, if in the future EPA promulgated standards that were more stringent than California's standards, this could implicate the ''protectiveness'' criterion of section 209(b)(1)(A). The possibility of such future events should not be used as a reason to deny a waiver now. Instead, the impact of a future EPA action should be considered if and when EPA takes action. Otherwise, the waiver could be denied now, even though in the future it could be determined that it should have been granted. This would tend to reverse the statutory presumption of the grant of waiver unless opponents demonstrate it should be denied for certain specific reasons. Instead, it would be denied because of some future possible action that may or may not occur, and may be delayed for an unspecified period of time. Basing a denial on the possibility of events that may happen in the future is not consistent with Congress' goal to preserve the broadest possible discretion to California. A more prudent approach is to take action based on the record at hand, with the possibility of reviewing such action in the future if facts change that merit such a review. As discussed above in section IV.C.1, EPA may withdraw a waiver in the future if circumstances make such action appropriate.

It is important to remember that the criterion being reviewed under section 209(b)(1)(C) is consistency with section 202(a) and not consistency with EPA standards. EPA has considerable deference within section 202(a) to promulgate the regulations it believes are most reasonable. The test for EPA under section 209(b)(1)(C) is not whether California standards are the same as the standards that EPA has promulgated or would promulgate under section 202(a), but whether the opponents of the waiver have met their burden to show, based on the record before the Agency, that the standards promulgated by California could not lawfully be promulgated in a manner consistent with section 202(a). As a prior Administrator has stated:

> I would feel constrained to approve a California approach to the problem which I might also feel unable to adopt at the federal level in my own capacity as a regulator. The whole approach of the Clean Air Act is to force the development of new types of emission control technology where that is needed by compelling the industry to ''catch up'' to some degree with newly promulgated standards. Such an approach * * * may be attended with costs, in the shape of a reduced product offering, or price or fuel economy penalties, and by risks that a wider number of vehicle classes may not be able to complete their development work in time. Since a balancing of these risks and costs against the potential benefits from reduced emissions is a central policy decision for any regulatory agency under the statutory scheme outlined above, I believe I am required to give very substantial deference to California's judgments on this score.[223]

In this case, opponents of the waiver have not met their burden of proving that EPA could not find that emissions of GHGs from new motor vehicles cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. To the contrary, while California and others have provided a great deal of evidence regarding the dangers posed by GHGs, opponents of the waiver have not provided significant evidence that emissions of GHGs from motor vehicles do not cause or contribute to air pollution that can reasonably be anticipated to endanger public health or welfare. The recent EPA proposal to find that elevated concentrations of greenhouse gases in the atmosphere are reasonably anticipated to endanger public health and welfare, and to find that emissions of carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons from new motor vehicles and new motor vehicle engines are contributing to this air pollution under section 202(a) of the Clean Air Act is further indication that opponents of the waiver did not meet their burden of proof on this issue.[224] Thus, I cannot find that those opposing the waiver have met their burden of proving that California's GHG standards are not consistent with section 202(a) for reasons of the endangerment test.[225]

G. Section 209(b)(1)(C) Conclusion

Based on its review of the information in the docket of this proceeding, I have determined that the opponents have not met their burden to demonstrate that the CARB GHG standards are not consistent with section 202(a). Therefore, I am unable to find that the CARB motor vehicle GHG emission standards are not consistent with section 202(a) of the Act.

VII. Additional Issues Raised

A. EPA's Administrative Process for Evaluating California's Waiver Request

1. Public Comment Process

Section 209(b)(1) states in part that ''The Administrator shall, after notice and opportunity for public hearing, waive application of this section * * *'' In response to this language, EPA has consistently announced in the **Federal Register** the opportunity for a public

[221] 71 FR 75536 (December 15, 2006).

[222] Commenter Alliance appears to put much weight on the existence of section 202(b)(3). That subsection was added in 1977 to ensure that where EPA provides a waiver for vehicle standards, vehicles meeting California standards can still receive a Federal certificate and be sold in California and other states where California standards are applicable. This was needed as some of the California standards may not individually be as stringent as federal standards, given the ''in the aggregate'' protectiveness provision. See discussion in *Ford* v. *EPA,* 606 F.2d 1293 (DC Cir. 1979). Without this provision, where more stringent individual federal standards applied, vehicles complying only with California standards could not receive a federal certificate of conformity. The language therefore is designed to deal with situations where federal standards exist, and may be more stringent than California's. It was not intended to add or imply any new substantive requirements regarding the existence of federal standards. Similarly, Alliance's reference to use of the word ''the'' in section 202(b)(2) is directed towards the first criterion of section 209(b), not the third. In any case, the argument raised could at most mean that section 209(b)(2) is not applicable to this waiver request. California does not rely on section 209(b)(2) in its request. Also, as noted above, EPA has long held that the absence of comparable federal standards would not automatically result in a denial of a waiver request under the ''in the aggregate'' criterion because EPA believes the appropriate comparison is between the protectiveness of the California standards as compared to the absence of the federal standards.

[223] 40 FR 23104.

[224] 74 FR 18885 (April 24, 2009).

[225] Some commenters have indicated that if EPA chooses not to deny the waiver based on lack of an endangerment finding, EPA should hold its decision in abeyance until it makes a finding. However, given the burden of proof on opponents of a waiver, and the lack of any significant evidence to the contrary in the record on this issue, I believe it is not appropriate to delay further a decision on this matter.

hearing for any waiver request received from CARB. As a general matter EPA has also offered an opportunity for written comment which has opened on the date of the **Federal Register** notice and closed on a date after the public hearing. As part of EPA's public hearings, the presiding officer has consistently stated that the hearing was being conducted in accordance with section 209(b) of the Clean Air Act and that any interested parties have the opportunity to present both oral testimony and written comments.

EPA has received comment suggesting that EPA has failed to provide any systematic procedure for commenters opposing the waiver to rebut the comments of those commenters supporting the waiver. Because opponents bear the burden of proof, this commenter believes that EPA should not treat the waiver proceeding like an informal rulemaking but instead clearly announce what evidence is admissible and applicable burdens of proof and evidentiary procedures, such as order of proof and argument that parties must follow.[226]

EPA's waiver proceedings and actions under section 209(b)(1) are informal adjudications. In a waiver proceeding, EPA receives a request from one entity (CARB) that is presenting an existing regulation established as a matter of California law. The request is for a waiver of preemption for that party, so it may adopt and enforce the specific regulations. In deciding this request, EPA interprets and applies the three specific criteria established by the Act, and under this provision EPA is required to grant the waiver unless EPA makes one of the three specified findings. EPA applies the pre-existing law, section 209(b), to a specific request covering a specific regulation or regulations, and applies the three statutory criteria to the facts of the specific request. The decision to grant or deny a waiver changes the legal rights of the party before EPA, California. If EPA grants the waiver, then CARB may enforce its state regulations. In that case, the rights and obligations of other parties, for example, the manufacturers, are affected by the operation of the state regulation that is no longer preempted. In addition, under a separate statutory provision, other States may then adopt and enforce California's' standards, under their state law. While these subsequent impacts clearly affect the legal rights and obligations of various parties, the only legal rights and obligations directly determined by EPA in the waiver proceeding are the rights of the State of California to adopt and enforce its state regulations. The other legal impacts flow from the operation of other laws, once the waiver is granted. Therefore EPA believes that its waiver proceedings and actions therein should be considered an informal adjudication rather than a rulemaking. EPA has been conducting its waiver proceedings in this manner for decades, and while Congress has amended provisions in section 209 on two separate occasions, Congress has not chosen to alter EPA's administrative requirements. Instead, Congress has expressed support for EPA's practice in applying and interpreting section 209(b).[227]

EPA disagrees with the suggestion that its waiver proceedings are governed by section 554 of the Administrative Procedure Act (APA) or any other provision of Title 5 of the United States Code, including sections 556, 557 and 558. Section 554 of the APA, regarding formal adjudications, only applies to adjudications required by statute to be determined on the record after an opportunity for an agency hearing. Section 209(b)(1) merely states that the Administrator shall provide notice and opportunity for a public hearing and does not include language stating that EPA's decision shall be on record after an opportunity for a hearing. Conversely, other provisions in the Clean Air Act, including section 205(c)(1) specifically state that EPA's actions shall be made on the record after opportunity for a hearing in accordance with sections 554 and 556 of title 5 of the United States Code. Section 205(c)(1) also requires the Administrator to issue reasonable rules for discovery and other procedures for hearings.

Any potential action on the waiver request is not subject to the requirements of APA section 558(c). Any potential action by EPA would not constitute granting a ''license'' to California. The fundamental purpose of section 209(b) is to waive application of the preemption set forth in section 209(a) of the Act, and is not a formal approval of the type contemplated in the APA. As noted previously, CARB must merely submit its regulations to EPA with a finding that its standards, in the aggregate, are as protective of public health and welfare as applicable federal standards. Unlike a license or permit applicant, the burden of proof is on the opponents of the waiver and EPA must make an affirmative finding of one of the three waiver criteria in order to deny California's waiver request. On the face of the Act, what California receives from EPA is a waiver, not a license or permit.

Contrary to commenter's claim, APA section 558 does not require the ''adversary process'' described in sections 556 and 557 for this action. APA section 558 requires the agency to ''complete proceedings required to be conducted in accordance with sections 556 and 557 of [the APA] *or* other proceedings required by law.'' 5 U.S.C. 558(c) (emphasis added). By complying with the procedural requirements of section 209(b) of the Act, EPA is complying with both the CAA and any relevant standards set in the APA.

Regardless, the approval provision in APA section 558 was not meant to establish additional procedural requirements beyond those required by law. Instead, the goal of the approval provision of the section is to ensure ''that an agency shall hear and decide licensing proceedings as quickly as possible.'' Attorney General's Manual of the APA (1947), 89. *Horn Farms* is not applicable to this situation, as the dicta statement regarding APA section 558 applied only to section 558's provisions regarding revoking a previously granted license, which is not at issue here.

EPA believes that only those actions or sections of the Clean Air Act that specifically reference section 554 or otherwise state that EPA's decision must be determined on the record after an opportunity for a hearing are subject to the formal adjudication requirements of the Administrative Procedure Act. EPA nevertheless, as part of good administrative practice, provides every interested party the opportunity to present oral testimony and provide written comment based on a **Federal Register** notice that clearly sets out the criteria by which EPA will evaluate CARB's waiver requests. EPA believes all commenters, including opponents of the waiver, have had ample opportunity to comment and meet their applicable burdens of proof. Opponents of CARB's GHG regulations and of its waiver request have had ample opportunity to present their viewpoints during the course of CARB's rulemaking and EPA's waiver proceeding. First, as noted in the March 6, 2008 Denial, in response to several requests to extend the comment period during EPA's initial consideration of CARB's waiver request EPA indicated that consistent with past waiver practice, it would continue, as appropriate, to communicate with any

[226] Alliance of Automobile Manufacturers, EPA–HQ–OAR–2006–0173.8994 at C–2 through C–4.

[227] The Committee on Interstate and Foreign Commerce that drafted the amendments to section 209 in 1977 stated that the amendment was ''intended to ratify and strengthen the California waiver provision and to affirm the underlying intent of that provision, *i.e.,* to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare.'' (H.R. Rep. No. 294 301–302 (1977)).

stakeholders in the waiver process after the comment period ended and that it would continue to evaluate any comments submitted after the close of the comment period to the extent practicable.[228] EPA did not receive any request to extend the written comment period during the reconsideration of CARB's request. Opponents have also had the opportunity to submit lengthy comments during two separate comment periods (one of which occurred well after CARB had submitted all of their initial comments) and to testify at three separate public hearings. The regulated industry has in its possession, along with CARB, the necessary information to adequately comment on whether the GHG emission standards are technologically feasible and also what CARB has said about the protectiveness of its standards from both CARB's rulemaking phase and from earlier comments. Opponents have the same access to the necessary information in order to formulate comments in regard to the second waiver criterion at section 209(b)(1)(B).

2. EPA's Reconsideration Process

Upon receiving CARB's January 21, 2009 request for reconsideration of the March 6, 2008 waiver Denial, EPA published a notice on February 12, 2008 notifying the public that EPA was reconsidering its March 6, 2008 Denial, and was providing an additional hearing and the opportunity to submit comment on all issues relevant to the waiver, including inviting comment on certain specific criteria and questions.

EPA received comment suggesting that the February 12, 2009 notice failed to inform the public of relevant issues and contained misleading statements and, therefore, the Agency must issue a new notice before proceeding with any reconsideration of the denial.[229] This commenter notes the EPA fails to discuss the legal standards EPA believes it must meet to justify reconsideration of a major policy action including the legal standards EPA believes governs how it is to reopen a previously decided matter. EPA believes this commenter fundamentally misunderstands the purpose of the February 12, 2009 notice. EPA's February 12, 2009 notice did not constitute a final decision to change the Agency's position with regard to California's greenhouse gas waiver request, and did not implicate any arguable requirement to supply a justification for changing previous interpretations of law or evidentiary findings. The Agency set forth sufficient reason for initiating a reconsideration process, and is under no obligation to provide anything further in the Notice announcing the process. EPA clearly set forth the criteria and issues it would review in the notice for reconsideration, which covered all of the issues relevant under section 209(b). It was unnecessary to provide any further justification for its reconsideration beyond that which was supplied in the notice. Commenters have failed to disclose that any procedural error by EPA prejudiced them in any way, or that EPA's February 12, 2009 notice limited their ability to fully comment on any of the issues relevant to California's request for a waiver.

3. Is a Waiver Required Before California or Section 177 States Adopt California's Motor Vehicle Emission Standards?

Several commenters have suggested that section 209(a), which provides that no ''political subdivision shall adopt or enforce any standard,'' should be read to mean that neither California nor any Section 177 state may ''adopt'' a motor vehicle emission emissions regulation before EPA grants a waiver. Since lead time is an issue under section 209(b)(1)(C), see section VI, EPA believes it appropriate to clarify this issue especially since EPA has previously stated that lead time runs from the date of adoption of the regulation. Similarly, because of the number of states that have already adopted CARB's GHG emission standards EPA believes it appropriate to clarify this issue for purposes of section 177 as well.

EPA believes that section 209(b) on its face provides the necessary clarification as to whether California should adopt its regulations before or after receiving a waiver from EPA. Section 209(b)(1) clearly envisions EPA commencing a waiver process after California has submitted standards that have been adopted. Section 209(b)(1) states in part ''The Administrator shall, after notice and opportunity for public hearing waive application of this section to any State which *has adopted* standards * * *'' (Emphasis added). It would be illogical, if not impossible, for EPA to analyze the criteria in section 209(b) if it does not have a final regulation upon which to do the analysis. It would not be appropriate for EPA to analyze non-final documents that may or may not become final and that may or may not be revised prior to becoming final. Similarly, the courts have long interpreted the Clean Air Act to authorize pre-waiver adoption of California standards by an opt-in state.[230]

B. Scope of EPA's Waiver Review

1. Relevance of the Energy Policy and Conservation Act (EPCA) to the Waiver Decision

In EPA's initial **Federal Register** notice of California's request for a waiver, we requested comment on whether the Energy Policy and Conservation Act (EPCA) fuel economy provisions are relevant to EPA's consideration of the request and to California's authority to implement its vehicle GHG regulations.[231]

EPA received many comments regarding EPCA and its effect, or lack thereof, on this proceeding. Several commenters stated that the provisions of EPCA are not relevant to EPA's waiver determination. They note that the language of section 209(b) limits the authority of EPA to deny a waiver to three criteria and does not reference inconsistency with EPCA (or with any other statute, other than section 202(a) of the Clean Air Act) as a basis for denial. One commenter noted that EPCA was already in existence when Congress strengthened California's authority to adopt motor vehicle emission standards, and Congress indicated no intent to limit such authority based on EPCA. Some commenters noted the Supreme Court decision in *Massachusetts* v. *EPA,* which stated that EPCA does not license EPA to shirk its environmental responsibilities under the Clean Air Act.

Several commenters also provided arguments regarding their view that California's GHG standards were consistent with the provisions of EPCA.

Other commenters stated that California's standards violate EPCA. Several of these commenters noted that EPA and court precedent regarding section 209(b) indicate that EPA cannot rule on EPCA preemption under section 209(b). However, the commenters state that if EPA does consider EPCA-related issues in this waiver proceeding, it must rule that California's standards violate EPCA. One commenter states that recent court cases have created confusion regarding the scope and effect of EPA waivers. The commenters state that if EPA decides not to address the issue of EPCA preemption in this proceeding, it

[228] 73 FR 12156, 12157 (March 6, 2008).

[229] Utility Air Regulatory Group, EPA–HQ–OAR–2006–0173–8690 at 2–5.

[230] *See Motor Vehicle Manufacturers Association* v. *New York Dept. of Environmental Conservation,* 17 F.3d 521, 533–34 (2d Cir. 1994)—''[T]he plain language of 177, coupled with common sense,'' leads to the conclusion that other states 'may adopt the [California] standards prior to the EPA's having granted a waiver, so long as [the state] makes no attempt to enforce the plan prior to the time when the waiver is actually granted.''

[231] 72 FR 12261.

needs to explicitly state that it is not addressing the issue of express preemption under EPCA or conflict with EPCA, and that those issues are best left to the courts.

As EPA has stated on numerous occasions, section 209(b) of the Clean Air Act limits our authority to deny California's requests for waivers to the three criteria therein, and EPA has refrained from denying California's requests for waivers based on any other criteria. As EPA noted in its initial decision denying California's waiver request, the decision was ''based solely on the criteria in section 209(b) of the Clean Air Act and this decision does not attempt to interpret or apply EPCA or any other statutory provision.'' [232] Where the Court of Appeals for the District of Columbia Circuit has reviewed EPA decisions declining to deny waiver requests based on criteria not found in section 209(b), the court has upheld and agreed with EPA's determination.[233]

As many of the commenters note, evaluation of whether California's GHG standards are preempted, either explicitly or implicitly, under EPCA, is not among the criteria listed under section 209(b). EPA may only deny waiver requests based on the criteria in section 209(b), and inconsistency with EPCA is not one of those criteria. In considering California's request for a waiver, I therefore have not considered whether California's standards are preempted under EPCA. As in the March 2008 decision, the decision on whether to grant the waiver is based solely on the criteria in section 209(b) of the Clean Air Act and this decision does not attempt to interpret or apply EPCA or any other statutory provision. EPA takes no position regarding whether or not California's GHG standards are preempted under EPCA.

2. Do California's GHG Emission Standards Create an Impermissible ''Patchwork''?

Under section 177 of the Act, other states may adopt California new motor vehicle emission standards under certain conditions. In this waiver proceeding EPA received comment suggesting that sections 202(a), 209(a) and 177 of the Act establish a regulatory framework designed to foster a national marketplace for vehicles while recognizing California's ability to establish its own program which can be adopted by other states. EPCA however, sets a single national fuel economy standard and is designed to prevent a fracturing of the marketplace into individual state programs. Commenters argue that manufacturers will have at least 15 different fleets they will have to balance for purposes of fuel economy and greenhouse gas emissions flowing from the fleet-average emission requirements of each state. Manufacturers also are concerned that there are significant differences between manufacturers' fleets in California and those in individual section 177 states creating unnecessary compliance burdens. The commenters suggest that the federal government should establish a single, national program for regulation of vehicle greenhouse gas standards and fuel economy.

EPA also received comment stating that to the extent the auto industry is arguing that a patchwork is created because of differences between fleet composition in different states, that argument lacks merit and is irrelevant to this waiver proceeding. Citing an EPA waiver decision from 1971, this commenter notes that claims such as the patchwork issue are not appropriate in a waiver proceeding since EPA's consideration of evidence submitted during a waiver proceeding is limited by its relevance to the three waiver criteria EPA must consider under section 209. This has led EPA to previously reject arguments that are not specified in the statute as grounds for denying a waiver.[234]

Similar to EPA's response to the EPCA claims noted above, EPA may only deny waiver requests based on the criteria in section 209(b). The actions of other states relating to the adoption of the California GHG emission standards is not a factor I may consider under section 209(b). The actions of such states are authorized under a separate section of the Act, section 177, and must conform to the requirements of that section, including identicality. Section 209(b) does not authorize me in reviewing a waiver request to consider the impact of actions or potential actions taken by other states under section 177 of the Act.[235] I therefore will not consider this claim in determining whether to grant California's waiver request.

It is important to note that on May 19, 2009, EPA and the Department of Transportation (DOT) issued a ''Notice of Upcoming Joint Rulemaking to Establish Vehicle GHG Emissions and CAFE Standards'' announcing EPA and DOT's intent to work in coordination to propose standards for control of emissions of greenhouse gases and for fuel economy, respectively. If proposed and finalized, these standards would apply to passenger cars, light-duty trucks, and medium-duty passenger vehicles (light-duty vehicles) built in model years 2012 through 2016. EPA believes that if these standards are ultimately adopted, they would represent a harmonized and consistent national policy pursuant to the separate statutory frameworks under which EPA and DOT operate.

3. What Impact Does Granting California a Waiver for Its GHG Emission Standards Have on PSD Requirements for GHGs?

Several commenters suggest that there would be a major consequence if an EPA waiver were to trigger other requirements under the Act, including Prevention of Significant Deterioration (PSD) requirements, and should it grant the waiver, EPA should state clearly that the waiver does not render GHGs ''subject to regulation'' under the Act. EPA also received comment suggesting that the question of when and how GHGs should be addressed in the PSD program or otherwise regulated under the Act should instead be addressed in separate proceedings dedicated to evaluating the complicated issues and impacts associated with those issues.

EPA agrees that these issues are not relevant to the waiver decision criteria, and are most appropriately addressed in a separate forum. EPA is not addressing these issues in today's decision.

VIII. Decision

After review of the information submitted by CARB and other parties to this Docket, I find that those opposing the waiver request have not met the burden of demonstrating that California's regulations do not satisfy any of the three statutory criteria of section 209(b). For this reason, I am granting California's waiver request to enforce its motor vehicle GHG emission regulations.

My decision will affect not only persons in California but also persons outside the State who would need to comply with California's GHG emission regulations. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by September 8, 2009.

[232] 74 FR at 12159.

[233] *See Motor and Equipment Manufacturers Ass'n* v. *Nichols,* 142 F.3d 449, 462–63, 466–67 (DC Cir. 1998), *Motor and Equipment Manufacturers Ass'n* v. *EPA,* 627 F.2d 1095, 1111, 1114–20 (DC Cir. 1979).

[234] 36 FR 17458 (August 31, 1971).

[235] 43 FR 1829, 1833 (January 12, 1978), LEV I waiver decision document at 185–186.

Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

As with past waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3).

Dated: June 30, 2009.

Lisa P. Jackson,

Administrator.

[FR Doc. E9–15943 Filed 7–6–09; 8:45 am]

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Federal Register

Vol. 74, No. 129

Wednesday, July 8, 2009

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FEDERAL REGISTER PAGES AND DATE, JULY

31345–31566 1
31567–31828 2
31829–32048 6
32049–32388 7
32389–32784 8

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8394 31821

Executive Orders:
13510 32047

5 CFR

1600 31345

7 CFR

52 32389
246 32049
354 32391
457 32049
760 31567
1205 32400
1400 31567
1439 31567
1491 31578
1730 32406

9 CFR

93 31582
320 31829

10 CFR

430 31829
431 32059

11 CFR

111 31345

12 CFR

41 ..... 31484, 32410
222 ..... 31484, 32410
308 32226
334 ..... 31484, 32410
363 32226
571 ..... 31484, 32410
717 ..... 31484, 32410
1253 31602

Proposed Rules:
41 31529
222 31529
334 31529
571 31529
717 31529

14 CFR

1 31842
26 31618
39 ..... 31350, 32411, 32414, 32417, 32419, 32421, 32423, 32426
71 ..... 31843, 31844, 31845, 31849, 32073, 32074
101 31842
121 31618
125 31618
129 31618

Proposed Rules:
39 ..... 31640, 31891, 31894, 31896, 32476
71 31899

15 CFR

742 31850
745 31850
748 31620
774 31850

16 CFR

641 32410
660 31484
680 32410
681 32410
698 32410

Proposed Rules:
660 31529

17 CFR

Proposed Rules:
16 31642
240 32474
270 32688
274 32688

18 CFR

Proposed Rules:
806 31647
808 31647

30 CFR

Proposed Rules:
944 32089

33 CFR

100 ..... 31351, 32428, 32431
110 31354
138 31357
165 ..... 31351, 31369, 32075, 32078, 32080, 32083

Proposed Rules:
165 31900

37 CFR

1 31372

38 CFR

17 31373
21 31854

39 CFR

3020 31374

Proposed Rules:
3050 31386

40 CFR

180 ..... 32433, 32437, 32443, 32448, 32453
190 32456
271 31380
300 32084
721 32460

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 1777/P.L. 111–39

To make technical corrections to the Higher Education Act of 1965, and for other purposes. (July 1, 2009; 123 Stat. 1934)

S. 614/P.L. 111–40

To award a Congressional Gold Medal to the Women Airforce Service Pilots ("WASP"). (July 1, 2009; 123 Stat. 1958)

Last List July 6, 2009

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